

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
FOR THE COUNTY OF YAVAPAI

SUPERIOR COURT  
YAVAPAI COUNTY, ARIZONA

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JEANNE HICKS, CLERK

BY: Jacqueline Harshman

STATE OF ARIZONA, )

Plaintiff, )

vs. )

STEVEN CARROLL DeMOCKER, )

Defendant. )

*P1300CR*  
Case No. 2008-1339

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE WARREN R. DARROW  
TRIAL DAY TWENTY-EIGHT  
JULY 23, 2010  
Prescott, Arizona  
(Partial Transcript)  
(Examination of Witnesses)

**ORIGINAL**

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1                   Proceedings had before the Honorable  
2   WARREN R. DARROW, Judge, taken on Friday, July 23,  
3   2010, at Yavapai County Superior Court, Division 6,  
4   120 South Cortez, Prescott, Arizona, before Mina G.  
5   Hunt, Certified Reporter within and for the State of  
6   Arizona.

## P R O C E E D I N G S

(Partial transcript -- testimony of witnesses.)

THE COURT: We're back on the record in the case of State of Arizona versus Steven Carroll DeMocker. Mr. DeMocker is present with his attorneys, Mr. Sears, Mr. Hammond and Ms. Chapman. The state is represented by Mr. Butner and Mr. Paupore. The jury has returned. And Sergeant Huante, the witness, has returned to the witness stand.

Before we get started I did want to note that I had a question from a juror that was brought in this morning. I addressed that question. Just in general had to do with going someplace and one of the state's attorneys happened to be there. I discussed that with the parties, with the attorneys.

There is no issue there that we see. If the juror disagrees, send another note later. But it does not appear to be any problem. And we appreciate the juror and jurors being conscientious and letting us know if there is any type of incident that raises any kind of question at all. All of us appreciate that. Thank you.

Then with regard to the jury questions I

1 will be presenting to the witness here,  
2 Sergeant Huante, in a moment. I wanted to address  
3 some of your questions really with instructions from  
4 the Court.

5 First, you must make your decisions based  
6 on the evidence presented in court. The Judge makes  
7 decisions on what evidence is admissible and may be  
8 considered by the jury. You must not consider the  
9 reasons for these legal decisions.

10 Second, ladies and gentlemen, I believe  
11 some of your questions may concern knowledge  
12 possibly possessed by other witnesses who may be  
13 called in this case. So those questions may be  
14 presented to witnesses who are called later in the  
15 trial.

16 I think that will at least provide you a  
17 preliminary answer to some of the questions. And if  
18 you don't have your questions answered here this  
19 morning, I will have Sergeant Huante --

20 Be asking you these questions. Probably  
21 aware that the lawyers will have a chance to follow  
22 up after I have presented the jury questions. And  
23 these are not in any particular order.

24 First, are the front and rear tires  
25 original to the Eddy Fisher bike?

1 THE WITNESS: Based on what I saw, they're old  
2 tires. Whether they're the original ones, I would  
3 not be able to say that.

4 THE COURT: Referring to Mr. DeMocker's  
5 interview, at what time did this interview begin?

6 THE WITNESS: We began the interview shortly  
7 after we arrived at the sheriff's office. We were  
8 at the scene around midnight. So it must have been  
9 around 1:00, 1:30.

10 THE COURT: How far is the bike trail where  
11 Mr. DeMocker's car was parked from the crime scene?

12 THE WITNESS: It's about a mile as the crow  
13 flies. So if you go in a straight direction, it's  
14 about a mile.

15 THE COURT: Did Mr. DeMocker's GPS system show  
16 anything definitive?

17 THE WITNESS: Unfortunately, no. The company  
18 advised us that their unit does not store any  
19 information at this time.

20 THE COURT: Did Katie's car key sitting in her  
21 car in the garage have a house key on it?

22 THE WITNESS: I don't remember.

23 THE COURT: How and when did you find out a  
24 bike was stashed?

25 THE WITNESS: When the detectives that were at

1 the scene walked, they saw the footprints and the  
2 bicycle tire tracks. And then the bicycle was left  
3 in the bushes and the footprints continued from  
4 there.

5 THE COURT: And, Sergeant Huante, this question  
6 calls for a yes or no response. Were there any  
7 photos taken of the location where you believe the  
8 bike was stashed near Glenshandra?

9 THE WITNESS: Yes.

10 THE COURT: How did he know that the suspect  
11 had escaped to the allegedly stashed bike on the  
12 open land at the same time that the scratch photos  
13 were being taken?

14 THE WITNESS: I'm sorry. Ask again.

15 THE COURT: How did he know that the suspect  
16 had escaped to the allegedly stashed bike on the  
17 open land at the same time that the scratch photos  
18 were being taken?

19 THE WITNESS: Based on the footprints that I  
20 saw that led from the gate around the back land  
21 towards the fenced area of the house, and then the  
22 same footprints eventually left the house back to  
23 where the bushes area that they followed to the bike  
24 where it was stashed and back out the gate again.

25 I don't know if that was done prior to we



1 got there. So I knew that we had some evidence out  
2 there when I was doing the interview.

3 THE COURT: Where was the blood found on pump?  
4 Right? Left? Top? Bottom?

5 THE WITNESS: I may be mistaken, but I believe  
6 it was in the middle.

7 THE COURT: Was the barbed wire checked for  
8 blood?

9 THE WITNESS: Yes. We also collected a section  
10 of the barbed wire.

11 THE COURT: If you know, please explain the  
12 time frame for the three times you stated Steve went  
13 back to his house.

14 THE WITNESS: Based on the gate code, it's sort  
15 of a remote control that has his own gate code.  
16 That unit showed that it was clicked on three  
17 times. So the gate was opened three times within a  
18 time period where Mr. DeMocker stated he was home.

19 THE COURT: What time was sunset on July 2nd,  
20 2008?

21 THE WITNESS: I believe it was around a little  
22 after 7:45.

23 THE COURT: Did Mr. DeMocker know he was being  
24 recorded in interview 1 and/or 2?

25 THE WITNESS: No.

1 THE COURT: Why would a text come back to the  
2 phone, if you know?

3 THE WITNESS: Newer phones usually will reply  
4 with a message that was originally sent. So it kind  
5 of duplicates itself. If you send one, it will  
6 return back to you.

7 THE COURT: When you interviewed Mr. DeMocker  
8 at the station on July 3rd, 2008, did he appear to  
9 be right or left handed or ambidextrous?

10 THE WITNESS: I couldn't tell based on what I  
11 had seen.

12 THE COURT: Was anything stolen from Carol  
13 Kennedy's house?

14 THE WITNESS: Not that we could determine.

15 THE COURT: Did Steve ride with you in your car  
16 or his own car?

17 THE WITNESS: He drove his own car.

18 THE COURT: What was the results of the buccal  
19 swab taken from Mr. McCullum?

20 THE WITNESS: I don't -- I believe I left the  
21 area or that section and I was back in patrol. So I  
22 don't know the results.

23 THE COURT: I'll go ahead and ask the next  
24 question related to that. Was his DNA found at the  
25 house on Bridle Path or on Carol Kennedy?

1 THE WITNESS: Not that I know of.

2 THE COURT: How many items were found in the  
3 washer on July 3rd, 2008?

4 THE WITNESS: I don't remember exactly how  
5 many. There were several of them.

6 THE COURT: Was there any of Carol Kennedy's  
7 blood on Steve's bicycle handle bar or any part of  
8 the bicycle?

9 THE WITNESS: Not that I know of. No.

10 THE COURT: I saw bicycle track in several  
11 places on the trail. Did you stop and look at them  
12 just before cow tank and after?

13 THE WITNESS: The tracks that I saw were not  
14 very defined. They appeared to be old. You could  
15 tell that they were tracks. But I did not stop to  
16 examine them. No.

17 THE COURT: Follow-up questions, Mr. Butner?

18 FURTHER REDIRECT EXAMINATION

19 BY MR. BUTNER:

20 Q. Detective Huante, the golf club. Were you  
21 able to ascertain whether the golf club that had  
22 been dropped off by Mr. DeMocker was still at the  
23 residence after the murder?

24 A. We were informed that the golf club --

25 MR. SEARS: I don't remember that being related

1 in any way to the jury question.

2 THE COURT: Mr. Butner?

3 MR. BUTNER: It's related to was anything  
4 stolen. His answer was not that we could  
5 determine.

6 THE COURT: You may proceed with that  
7 question.

8 MR. BUTNER: Thank you.

9 THE WITNESS: Ask again, sir.

10 MR. BUTNER: Would you please read it back.

11 I'll go ahead and ask it again.

12 Q. The golf club. Was the golf club that was  
13 dropped off by Mr. DeMocker found at the victim's  
14 residence?

15 A. No, sir. We did an extensive search but  
16 it was never found.

17 Q. Thank you.

18 No further questions.

19 THE COURT: Mr. Sears, do you have follow up to  
20 any of these questions?

21 MR. SEARS: I do.

22 RECROSS-EXAMINATION

23 BY MR. SEARS:

24 Q. Sergeant, this golf club there, the  
25 information that you have about it being Carol

1 Kennedy's residence came from people who were told  
2 that by Mr. DeMocker; correct?

3 A. I believe his daughter told us that the  
4 golf club was taken over there or given to her.

5 Q. And that information from the daughters  
6 came from conversations they had with their father;  
7 correct?

8 A. I don't know.

9 Q. Okay. Neither of his daughters told you  
10 that they were present when the golf club was  
11 delivered to the residence at Bridle Path, did  
12 they?

13 A. Correct.

14 Q. Neither of the daughters told you that  
15 they ever again saw that golf club at Bridle Path;  
16 correct?

17 A. Correct.

18 Q. That golf club has never been recovered;  
19 correct?

20 A. Correct.

21 Q. Is there a stolen property report  
22 someplace for that golf club?

23 A. No, sir.

24 Q. On the same topic of whether anything was  
25 stolen, tell us again what was done to determine

1     what was in the house so that you could see if  
2     anything was missing.

3           A.     We attempted to speak with Mr. DeMocker to  
4     see what he knew what was in there. We attempted to  
5     speak with his daughter, who eventually refused to  
6     come back to the house with us. We spoke with  
7     Mr. Knapp and we asked him about the conditions of  
8     the house and what was missing. And he couldn't  
9     tell us if anything was missing.

10          Q.     Other than that, was any investigation  
11     done to see what Carol Kennedy may have had in her  
12     house prior to the events of July 2nd?

13          A.     That's about it, sir.

14          Q.     And we talked yesterday, for example,  
15     about checks. And I think you told us that no  
16     investigation was done to see if any checks or  
17     checking accounts were missing?

18          A.     That's not correct. No.

19          Q.     You didn't tell us that?

20          A.     We did conduct an investigation. Yes, we  
21     did.

22          Q.     Okay. What was the result of that  
23     investigation?

24          A.     I myself did not do that. I believe it  
25     was Detective Doug Brown.

1 Q. So we'd have to wait for his testimony?

2 A. Right.

3 Q. Okay. What about cash in the house?

4 A. I asked Mr. DeMocker on that, and he  
5 couldn't tell me if there was or wasn't.

6 Q. Mr. DeMocker told you that he hadn't been  
7 in the house for at least six months; right?

8 A. Right.

9 Q. So Mr. DeMocker's information about what  
10 was present in the house on July 2nd wouldn't be  
11 terribly useful, would it?

12 A. Correct.

13 Q. What about anybody else being asked about  
14 cash in the house?

15 A. Again, we attempted to speak with his  
16 daughter Katie, and she refused.

17 Q. Because you were accusing her father of  
18 killing her mother; right?

19 A. Yes.

20 Q. Anybody else?

21 A. Jim Knapp.

22 Q. And Mr. Knapp wasn't aware of any cash in  
23 the house?

24 A. Correct.

25 Q. This is the same Mr. Knapp that was in and

1 out of the house between July 2nd and July 8 while  
2 the investigation was going on?

3 A. Yes.

4 Q. Did you conduct any investigation of bank  
5 records to see whether Carol Kennedy had any cash  
6 from bank withdrawals that was not otherwise  
7 accounted for?

8 A. Yes.

9 Q. What was the result of that investigation?

10 A. I don't know those results, sir.

11 Q. Who would?

12 A. Doug Brown or John McDormett.

13 Q. One of the two case agents; right?

14 A. Right.

15 Q. Now, what about other objects -- VCRs,  
16 cameras, television sets? What did you do to  
17 ascertain what Ms. Kennedy owned on July 2nd?

18 A. We could not determine that anything was  
19 missing.

20 Q. My question was what investigation did you  
21 conduct?

22 A. We examined the house. We couldn't  
23 determine there was anything missing based on what  
24 we've learned.

25 Q. None of you had been to her house before;



1 correct?

2 A. Right.

3 Q. So police officers looking at the house to  
4 see if something is missing is of very little use to  
5 determine whether something is missing because you  
6 don't know what's there?

7 A. That's why we asked the daughter and  
8 that's why we asked Mr. Knapp.

9 Q. So that's the sum? With regard to this  
10 investigation, it's the daughters, Mr. DeMocker and  
11 Mr. Knapp? Those are the people that you asked;  
12 right?

13 A. Yes, sir.

14 Q. No one else?

15 A. That was the extent of the cooperation we  
16 got.

17 Q. You didn't think to ask anyone else, any  
18 of her other friends, other people?

19 A. There was nobody else that was closer.

20 Q. Back to the question about when the  
21 interview of Mr. DeMocker began, are you telling us  
22 here today that the time of that interview was not  
23 recorded someplace?

24 A. It should have a date and time stamp on  
25 it.

1 Q. On the video; is that right?

2 A. Correct.

3 Q. What about the interviews 1 and 2, the two  
4 audio recordings? Was there any effort made to get  
5 the time those began?

6 A. Usually the recording will also have a  
7 time and day stamp on it too.

8 Q. And what is the time and date stamp for  
9 those two interviews?

10 A. I cannot tell you exactly what time it is.

11 Q. What is the time and date stamp for the  
12 beginning of the video interview?

13 A. I don't remember, sir. It would be on the  
14 video.

15 Q. Talking about the -- there were a series  
16 of questions that were asked a moment ago about this  
17 idea that Mr. DeMocker stashed his bike someplace  
18 out on the open lane in some bushes; is that right?

19 A. Yes.

20 Q. I think you told us pretty clearly that on  
21 the night of July 2nd you didn't go out to the  
22 Glenshandra area, which is where the police  
23 eventually concluded he had stashed his bike. You  
24 personally did not go out there?

25 A. Not that night. I did go up the following

1 day, though.

2 Q. Okay. And what you did instead was to go  
3 down to Prescott to the sheriff's office and  
4 interview Mr. DeMocker that night; right?

5 A. Right.

6 Q. And then prepare a search warrant and then  
7 go out, as you told us yesterday in detail, and be  
8 involved with the execution of the search warrant;  
9 right?

10 A. Yes.

11 Q. One of the questions was when you were at  
12 the sheriff's office and those pictures that we've  
13 seen of Mr. DeMocker in his underwear were being  
14 taken, you couldn't possibly have known at that time  
15 about the idea that a bike had been stashed out in  
16 the open land; correct?

17 A. I'm not exactly sure when I learned that.  
18 It might have been afterwards.

19 Q. Correct. You can't tell us here today?

20 A. No.

21 Q. Okay. Now, originally your theory was  
22 that the cuts, particularly the deep cuts, on  
23 Mr. DeMocker's leg were inflicted by the barbed wire  
24 when he climbed over or through that barbed wire  
25 fence? That was your original theory; right?

1 A. I don't think I've ever said that.

2 Q. Did you believe that at the time?

3 A. That was possible. Yes.

4 Q. Okay. And it turns out that when the  
5 barbed wire was tested, no blood was found on that  
6 barbed wire; correct?

7 A. That's not true. There was some blood  
8 found of that.

9 Q. No blood of Mr. DeMocker's on that barbed  
10 wire?

11 A. I'm not sure of the conclusions of the  
12 test.

13 Q. We'll have to wait for some other record?

14 A. Yes.

15 Q. Now, don't you think two years into this  
16 case if Mr. DeMocker's blood had been found on that  
17 piece of barbed wire, whether you were working on  
18 the case or not, that information would be known to  
19 you?

20 A. Probably. Yes.

21 Q. And you don't know of any such result, do  
22 you?

23 A. Not right now. No.

24 Q. Okay. And is there any reason you have to  
25 believe that if somehow through some scientific

1 analysis by some lab some of Mr. DeMocker's blood  
2 was found anywhere at the scene, including the  
3 barbed wire behind the house, it would be all over  
4 the sheriff's department in a heartbeat?

5 A. I probably would have been told.

6 Q. And you haven't?

7 A. Right.

8 Q. Doesn't that tell you something?

9 A. That we didn't find his blood.

10 Q. There you go.

11 Now, the next piece of information you  
12 have about the scratches was a possibility that  
13 Mr. DeMocker had been scratched either by Carol  
14 Kennedy or something inside the house; right?

15 A. That's possible. Yes.

16 Q. And then some time after the murder but  
17 before Mr. DeMocker was arrested on October 23,  
18 2008, law enforcement learned that Mr. DeMocker's  
19 DNA was not under the fingernails, plural, on her  
20 left hand but instead it was 603 and then later two  
21 unidentified males? You learned that over the  
22 course of the summer of 2008; correct?

23 A. I believe so. Yes.

24 Q. So it would have been extremely unlikely  
25 that the scratches that we saw on Mr. DeMocker were

1 inflicted on by Carol Kennedy; correct?

2 A. I don't know.

3 Q. Somebody else's DNA is there but not  
4 Mr. DeMocker's; correct?

5 A. True.

6 Q. So that if she scratched Mr. DeMocker  
7 particularly hard enough to cause that deep cut on  
8 his lower left ankle, you would expect, would you  
9 not, that her fingernails would have his DNA;  
10 correct?

11 A. I don't know if that occurred or didn't  
12 occur.

13 Q. Well, just answer -- my question is about  
14 the DNA. You would expect, would you not, based on  
15 your experience and training, that if Carol Kennedy  
16 scratched Mr. DeMocker hard enough on the night of  
17 July 2nd, 2008, to cause those injuries, she would  
18 have some of his DNA under her fingernails?

19 A. Based on what I saw at the scene, I don't  
20 believe Ms. Kennedy had the opportunity to fight  
21 back.

22 Q. Can you try to answer my question about  
23 under her fingernails. Let's assume for the  
24 purposes of question that the question is whether or  
25 not Ms. Kennedy scratched Mr. DeMocker to cause some

1 or all of these injuries. Can we agree on that?

2 A. I don't know if that occurred, sir.

3 Q. Well, there is no evidence to support  
4 that; correct?

5 A. Correct.

6 Q. There is no evidence to support that,  
7 particularly in view of the DNA of someone else  
8 under her fingernails; correct?

9 A. Correct.

10 Q. And not any of Mr. DeMocker's blood or DNA  
11 was ever found at the crime scene, particularly in  
12 the room where the body was found; correct?

13 A. Yes.

14 Q. And if Mr. DeMocker had sustained these  
15 injuries, particularly the one that you saw still  
16 oozing blood at Bridle Path, you would expect that  
17 his blood would be there; correct?

18 A. It all depends on where he sustained his  
19 injuries.

20 Q. Let's talk about inside the house in the  
21 room where Carol was killed.

22 A. From what I saw at the scene, I don't see  
23 what would cause those injury in the house.

24 Q. Now, we go to another theory. So one  
25 theory that apparently has been rejected is that

1 Mr. DeMocker cut himself on the barbed wire. There  
2 is no physical evidence to support that; right?

3 A. There was some sort of blood sample found  
4 at the barbed wire.

5 Q. Not Mr. DeMocker's?

6 A. I don't know that.

7 Q. A recent theory at the sheriff's office is  
8 that Mr. DeMocker sustained these scratches when he  
9 was going from the crime scene back to where he left  
10 his bike by going through some bushes; right?

11 A. That's possible. Yes.

12 Q. Okay. Was that theory developed while you  
13 were still working on the case before April of  
14 2009?

15 A. I believe so. Yes.

16 Q. Whose theory was it?

17 A. Based on what I saw at the scene, I kind  
18 of concluded to that. I don't know what else -- the  
19 other detectives did the same.

20 Q. Okay. And we, of course, have pictures of  
21 these bushes that would show where in particular  
22 Mr. DeMocker could have gotten a cut like that on  
23 his ankle walking through a bush?

24 A. I believe we have photos of the footprints  
25 and the area they were.



1           Q.    So your theory is Mr. DeMocker is walking  
2   and moving quickly enough to snag himself on a bush  
3   and cause the injury that you saw on his lower left  
4   ankle?  Is that what you're saying?

5           A.    That's possible.  Yes.

6           Q.    And, of course, there is no biological  
7   evidence recovered?  No effort was made to go back  
8   to those bushes and see if you could find  
9   Mr. DeMocker's blood or DNA in the bushes; right?

10          A.    We did conduct a search in the area, but  
11   nothing was found.

12          Q.    A search of the area that you conducted  
13   was looking for objects; right?

14          A.    Sure.

15          Q.    And that was done on July 6; right?

16          A.    Correct.

17          Q.    You weren't looking for Mr. DeMocker's  
18   blood on a bush that day, were you?

19          A.    We were looking for anything.

20          Q.    You weren't looking for Mr. DeMocker's  
21   blood or DNA on a bush in particular, were you?

22          A.    Not necessarily.

23          Q.    Was Mr. DeMocker still wearing the  
24   coveralls that you think he was wearing when he  
25   walked through that bush?

1           A.    I would have to speculate on that.  I  
2   don't know.

3           Q.    Just like you're speculating that he was  
4   wearing coveralls at all?

5           A.    That's possible.  Yes.

6           Q.    Okay.  So maybe he had -- maybe he left  
7   the scene, took the coveralls off and walked through  
8   the bush?

9           A.    Again, sir, I would have to speculate on  
10  that.

11          Q.    Okay.  These gate times that we're talking  
12  about -- can you tell us the time of day the gate  
13  was opened by Mr. DeMocker on the evening of July 2,  
14  2008?

15          A.    I believe the first one was at 10:08.  And  
16  the other ones kind of proceeded shortly after that,  
17  p.m.

18          Q.    That's two?  That's two; right?  You said  
19  there were three?

20          A.    Correct.  The first one was at 2:08 and  
21  the other two were shortly after that.

22          Q.    10:08?

23          A.    After 10:08.

24          Q.    Do you remember the times?

25          A.    Not particularly right now.  They were

1 very shortly within --

2 Q. Between 10:08 and what time? What's the  
3 last time?

4 MR. BUTNER: Objection. Calls for speculation,  
5 asked and answered, Judge.

6 THE COURT: Overruled.

7 THE WITNESS: At the time that he arrived at  
8 the scene at Bridle Path.

9 Q. BY MR. SEARS: Which was what time?

10 A. Around midnight.

11 Q. Going to the question of sunset, you said  
12 sunset, you thought, was shortly after 7:45 p.m.  
13 Sunset doesn't mean totally dark, does it?

14 A. No.

15 Q. In the summertime, particularly in  
16 Prescott, Arizona, in that area, it remains light  
17 for some period of time after official sunset;  
18 correct?

19 A. Some.

20 Q. You're not an expert in the area and you  
21 have no records, do you?

22 A. I don't.

23 Q. Okay. Somebody else may have?

24 A. Yes.

25 Q. But it's your experience that at official

1 sunset it is not completely dark?

2 A. Not necessarily. No.

3 Q. When were you actually shown the place  
4 where other officers believed the bike had been  
5 stashed? When was that?

6 A. I believe it was when I went back to  
7 conduct the search on Bridle Path.

8 Q. Which day?

9 A. On the 3rd.

10 Q. What time?

11 A. Probably shortly after I arrived, which  
12 was maybe noon.

13 Q. Who showed you that area?

14 A. I believe I was with Sergeant Dan  
15 Winslow. He was in the area.

16 Q. Can you describe for us what the evidence  
17 that were you shown was that made you conclude that  
18 a bike had been stashed in that area.

19 A. You could see where the bushes had been  
20 crumpled like an object had been placed there or an  
21 object had been on top of the bushes.

22 Q. That's it?

23 A. Yes.

24 Q. Okay.

25 No other questions.

1 THE COURT: Thank you.

2 Mr. Butner?

3 FURTHER REDIRECT EXAMINATION

4 BY MR. BUTNER:

5 Q. In regard to the DNA that was found  
6 beneath the fingernail of the victim, Carol Kennedy,  
7 that would be her left fingernail?

8 A. I believe so.

9 Q. And how many -- how many people's DNA were  
10 found there?

11 A. I think at least three.

12 Q. And was any identification managed for any  
13 of those people in terms of who they actually were?

14 A. We have not been able to ascertain that.

15 Q. Do you know how many people have been  
16 buccal swabbed approximately to find out if they  
17 match that DNA?

18 A. The last thing I checked was probably over  
19 50.

20 Q. And have we -- have you established a  
21 match for that DNA in any other source, for example,  
22 the CODIS bank of DNA?

23 A. No.

24 Q. Has it been processed against CODIS?

25 A. I believe it was entered. Yes.

1 Q. Do you know how often that's done?

2 A. I think the computer automatically  
3 rechecks it every so often.

4 Q. Do you know how often?

5 A. No, sir.

6 Q. Okay. But all of those samples have been  
7 checked?

8 A. Yes.

9 Q. And no matches?

10 A. Right.

11 Q. And in terms of the DNA samples that were  
12 checked, did that include the sample obtained from  
13 Mr. McCullum?

14 A. Yes.

15 Q. And it was found to not match?

16 A. I believe so.

17 Q. In terms of where the bicycle was stashed,  
18 in addition to the bushes being crumpled, were there  
19 other things that demonstrated that a bicycle had  
20 been stashed in that particular area?

21 A. You could see the bicycle tracks that led  
22 to that area. And then they stopped and there were  
23 no more bicycle tracks after that.

24 Q. Okay. And were there any footprints in  
25 the area?

1           A.     Yes. The footprint went with the bicycle,  
2     and the footprints continued from where the bicycle  
3     tracks stopped.

4           Q.     Had you heard about this evidence, at  
5     least the presence of bicycle tracks and footprints,  
6     before you left the crime scene to go down to  
7     interview Mr. DeMocker?

8           A.     Yes.

9           Q.     And who did you hear from that -- about  
10    that from?

11          A.     Sergeant Candice Acton.

12          Q.     She was one of the patrol supervisors that  
13    was one of the first responders at the scene?

14          A.     That's correct.

15          Q.     And what information did Candice Acton  
16    provide you?

17          MR. SEARS: Calls for hearsay.

18          THE COURT: Sustained.

19          MR. BUTNER: No further questions.

20                 Thank you.

21          THE COURT: Sergeant Huante, if you remain  
22    there, we're going to have to do a sidebar.

23                 Ladies and gentlemen, I want to make  
24    clear, and I think Judge Lindberg said this:  
25    Whenever we go to sidebar, please feel free to stand

1 and move around a bit.

2 (Pause in proceedings.)

3 (Sidebar conference held off the record.)

4 THE COURT: Ladies and gentlemen, you will  
5 recall when I started out, I indicated that there  
6 are going to be other witnesses called. They may  
7 have different type of knowledge in the case and who  
8 may be in a better position to answer certain  
9 questions. So that's what I'm going to say and  
10 remind you of that at this point.

11 Mr. Butner, may Sergeant Huante be excused  
12 as a witness at this time?

13 MR. BUTNER: He may, Judge.

14 THE COURT: Mr. Sears?

15 MR. SEARS: Subject to possible recall, Your  
16 Honor, please.

17 THE COURT: Okay.

18 Sergeant Huante, you will be excused for  
19 today. However, you are subject to recall. I want  
20 to go over the rule of exclusion of witnesses with  
21 you. That means that you cannot communicate with  
22 other witnesses in any way about your testimony or  
23 about any other aspect of this case until all of the  
24 witnesses have testified.

25 It is a good idea not to talk to anyone



1 about this case until the trial is completed.  
2 However, you may talk to the attorneys as long as no  
3 other witnesses are present. You understand?

4 THE WITNESS: Yes, sir.

5 THE COURT: Then you are excused for today.  
6 Thank you.

7 Mr. Butner?

8 MR. BUTNER: I'd like to call Marjorie Powell  
9 to the stand, Judge.

10 THE COURT: Marjorie Powell. Please step  
11 forward and raise you're right hand to be sworn.

12 MARJORIE POWELL,  
13 having been first duly sworn upon her oath to tell  
14 the truth, the whole truth, and nothing but the  
15 truth, testified as follows:

16 THE COURT: Please be seated here at the  
17 witness stand.

18 (Pause in proceedings.)

19 DIRECT EXAMINATION

20 BY MR. BUTNER:

21 Q. Would you please state your full name for  
22 the record.

23 A. Marjorie Powell.

24 Q. And in what community do you reside,  
25 Miss Powell?

1           A.     Prescott.

2           Q.     How long have you lived in Prescott,  
3     Arizona?

4           A.     Since 1984.

5           Q.     And do you have an affinity for horses?

6           A.     Yes, I do.

7           Q.     And do you exercise that affinity, so to  
8     speak?

9           A.     Yes.

10          Q.     How do you do that?

11          A.     Well, I have a horse, which is boarded out  
12     off of Williamson Valley Road on Jockey Path. And I  
13     ride three or four times a week out on the Deep Well  
14     Ranch or over on Granite Mountain or trailer  
15     somewhere to ride.

16          Q.     Okay. And who do you board your horse  
17     with?

18          A.     Pattie Johnson-Cools.

19          Q.     And have you got riding partners, so to  
20     speak?

21          A.     Yes, I do.

22          Q.     Would you tell us who one of your favorite  
23     riding partners is.

24          A.     Well, most often it's Lila Farr.

25          Q.     Okay. And were you boarding your horse

1 out on Jockey Path on July the 2nd of the year 2008?

2 A. Actually, no. At that time I was boarding  
3 my horse just off of Williamson Valley Road, which  
4 is about half a mile farther from the ranch.

5 Q. Okay. When you say "half a mile farther  
6 from the ranch," what ranch?

7 A. The Deep Well Ranch, owned by the James  
8 family.

9 Q. Okay. Are you familiar with the street  
10 known as Bridle Path?

11 A. Yes.

12 Q. Okay. How does Bridle Path relate to  
13 Jockey Path?

14 A. Well, Bridle Path runs roughly north and  
15 south and then makes a turn, and that becomes Jockey  
16 Path.

17 Q. I've got this big map here. Can you see  
18 the map clearly?

19 A. No. Not well enough.

20 Q. Let me cock it at an angle for you if you  
21 remain on the stand.

22 Does that help?

23 A. Yes, that does.

24 Q. I'm going to give you this laser pointer  
25 too. Okay. You see this big map in front of us?

1           A.    I do.  I cannot read the signs however.

2           Q.    Okay.  Well, you know what.  First of all,  
3 I'd better call it an exhibit number for the  
4 record.  It's Exhibit No. 2312 for the record.

5                   And so you can't read the writing of the  
6 labels?

7           A.    No, I can't.  I'm sorry.

8           MR. BUTNER:  Is it okay if she steps down from  
9 the witness stand?

10          THE COURT:  Yes.

11                   Please watch your step.

12          THE WITNESS:  I can see it now.

13          Q.    BY MR. BUTNER:  You can read it better?

14          A.    Much better.

15          Q.    Okay.  Do you see the address there of  
16 7485 North Bridle Path?  And I'm going to point to  
17 the area.

18          A.    I see.

19          Q.    With that red cross right there?

20          A.    Right.

21          Q.    Okay.  Do you -- are you able to tell from  
22 looking at the map now where Jockey Path is in  
23 relation to that --

24          A.    Just to the left of the little cross right  
25 there, just right in here.

1           Q.    Jockey Path is the left-hand turn off the  
2    Bridle Path?

3           A.    Left-hand turn off of Bridle Path.

4           Q.    You're blocking the jurors.  Could you  
5    move off a little bit.

6           A.    Sorry.

7           Q.    Thank you.  You were boarding your horse  
8    at a different location, though, on July 2nd; is  
9    that correct?

10          A.    That's correct.

11          Q.    Can you tell on this map, basically, where  
12    were you boarding your horse on that date?

13          A.    I was on Williamson Valley Road  
14    probably -- if I can come a little closer.

15          Q.    Sure.

16          A.    Let me see where it would be.

17          Q.    Was it at the Granite Mountain Stables?

18          A.    No.  It was the next section this side of  
19    that.  Can you tell me where the Granite Mountain  
20    Stables are?

21          Q.    I really can't tell on that.  But it was  
22    closer in to town?

23          A.    It had to be right here.

24          Q.    Okay.  What was the name of the place were  
25    you boarding at?

1           A.    It didn't have a name.  It was just owned  
2   by Michelle Priss-Goodrose's parents.

3           Q.    Okay.  And on July the 2nd of the year  
4   2008, did you take your horse out for a ride?

5           A.    Yes, I did.

6           Q.    Approximately what time of the day were  
7   you doing that?

8           A.    Well, we probably left -- I probably left  
9   the barn around 5:30, something like that.

10          Q.    Okay.  And where did you head from the  
11   barn where you had boarded your horse?

12          A.    To the -- actually, up Glenshandra Street.

13          Q.    And you see Glenshandra on the map there;  
14   right?

15          A.    Yes.  It's on there.  I rode over there by  
16   the way of way of racetrack through Glenshandra.

17          Q.    So you rode through the neighborhood?

18          A.    I rode through the neighborhood.  Then I  
19   went to Lila Farr's house.  And we went through her  
20   gate onto the Deep Well.

21          Q.    Okay.  Would you kind of show us the route  
22   with the laser pointer where you rode.  You don't  
23   have to find the exact streets.  Just kind of  
24   generally show us.

25          A.    Okay.  Let's see.  From here around

1     here --

2           Q.     Okay.  You need to move back a little bit  
3     more.

4           THE COURT:  Mr. Butner, I think if Miss Powell  
5     just has a pointer --

6           THE WITNESS:  Probably be better if --

7           THE COURT:  She can just stand over as close to  
8     Mina as she needs to.

9           THE WITNESS:  That's good.  Okay.  Winding  
10    around through the roads here and across here and  
11    then down the wash and over to Glenshandra.

12          Q.     BY MR. BUTNER:  There is a wash that runs  
13    through there?

14          A.     There is a wash that runs through here to  
15    Glenshandra and over here.  And this would be where  
16    Lila's house is, I believe.  We went through her  
17    gate.  This is a community gate at the end of  
18    Glenshandra, but I did not use that that night.  I  
19    went through Lila's yard to pick her up at her barn,  
20    and we went out to the Deep Well.

21          Q.     Okay.  Now, you said there is a community  
22    gate at the end of Glenshandra.  Is that gate  
23    locked?

24          A.     That gate is locked.  And the combination  
25    is given to horseback riders who are friends of the

1 people who paid to put it in.

2 Q. Okay. So you had the combination to go  
3 through the gate?

4 A. I have the combination. I could have gone  
5 through that gate, but that night I chose to go  
6 through Lila's gate.

7 Q. And Lila had her own separate gate?

8 A. Had her own separate gate.

9 Q. Was her gate locked?

10 A. Yes. Her gate is always locked.

11 Q. But where is the key?

12 A. She keeps the key.

13 Q. Okay. So Lila's place is just to the  
14 south of the Glenshandra gate?

15 A. Yes. She's the last house on the south  
16 side of Glenshandra or was at that time anyway.

17 Q. Right. Are you familiar with Carol  
18 Kennedy's residence, where it was located?

19 A. Yes. It's on Bridle Path here right at  
20 the corner.

21 Q. Right where it makes the bend onto Jockey  
22 Path?

23 A. Where it makes the bend onto Jockey Path.  
24 And years before I had ridden through their gate,  
25 the DeMocker's property, to get onto the Deep Well.



1           Q.    All right.  So that evening you went  
2   riding at approximately 5:30?

3           A.    Somewhere in that neighborhood.  Right.

4           Q.    And rode up to Lila's house?

5           A.    Uh-huh.

6           Q.    Is that yes?

7           A.    Yes, that is.

8           Q.    And then from Lila's house did the two of  
9   you go riding out on the Deep Well?

10          A.    We went riding out on the Deep Well.  And  
11   there is a sort of a path that makes a big, long  
12   circle round.  We went around that circle, which  
13   takes an hour or hour and a half anyway.  And we're  
14   coming back toward the gate.

15          Q.    Okay.  Was it just the two of you, you and  
16   Lila?

17          A.    Just the two of us.

18          Q.    Okay.  Do you still have the same horse  
19   that you were riding then?

20          A.    No, I don't.

21          Q.    What horse did you have then?

22          A.    The horse I had then was a Peruvian paso  
23   mare who is since deceased.

24          Q.    I see.  Did you have her a long time?

25          A.    I had her for quite a while.

1 Q. Miss her?

2 A. Yes, I do.

3 Q. Okay. There is something special about  
4 Peruvian pasos, isn't there?

5 A. They're very, very smooth.

6 Q. Right. A smooth gait. They have extra  
7 flexibility in their --

8 A. My old bones appreciate that.

9 Q. Okay. All right. And then what kind of  
10 horse was Lila riding?

11 A. Her big, tall quarter horse.

12 Q. So the two of you rode out on the Deep  
13 Well. Could you kind of show us the route that you  
14 went on, please.

15 A. Well, out this way, and then come around  
16 through the trees and the meadow and so forth and  
17 back this way. I can't see marker that we used for  
18 the -- there is a windmill out here somewhere, but I  
19 don't see it.

20 Anyway, it's around this way, maybe out as  
21 far as here and then back around.

22 Q. Okay. And there is a big wash that's  
23 depicted on this map -- right? -- this big wash over  
24 here?

25 A. Correct.

1 Q. Do you ride out this area far?

2 A. Oh, yes, we do. Now that you point that  
3 out, we did go further out here. Because the way  
4 back, then, is coming past the wash.

5 Q. Riding alongside the wash?

6 A. Pretty much.

7 Q. Sometimes into it?

8 A. Well actually, no. There is only one gate  
9 that goes through that's more up here somewhere.  
10 And there is a fence there. So you can't just right  
11 directly into that wash.

12 Q. Okay. Is there a gate out toward the end  
13 of your ride, out here someplace along the wash?

14 A. Yes. There is a pipeline gate, white  
15 pipeline gate.

16 Q. White pipeline gate?

17 A. Uh-huh.

18 Q. Did you go out that far?

19 A. We went by there.

20 Q. How long does your ride usually take?

21 A. That's about an hour, little over maybe.

22 Q. Okay. So you and Lila were out riding on  
23 July the 2nd of the year 2008. You had left about  
24 5:30? Is that correct?

25 A. Yes. If I think about it better, I think

1       probably I got to her house closer to 5:30.

2           Q.     Okay. And then you went out through her  
3     gate.

4           A.     Through her gate.

5           Q.     Okay. And you went out on the Deep Well.  
6     And did you make it out to that pipeline gate?

7           A.     No. Not quite. We turned and came back  
8     before we got there.

9           Q.     Okay. Could you see it from where you  
10    turned?

11          A.     Oh, yes. We could see it.

12          Q.     Okay. While were you out riding that  
13    particular evening, did you encounter anybody?

14          A.     Well, we did see Carol just before we were  
15    getting back to the -- toward Lila's house. We were  
16    getting fairly close.

17          Q.     Okay. When you say "Carol" --

18          A.     Carol DeMocker.

19          Q.     Okay. Or Carol Kennedy?

20          A.     Carol Kennedy.

21          Q.     Okay. Can you show us on the map  
22    approximately where you saw her.

23          A.     Well, it would have to be, I think,  
24    somewhere around here.

25          Q.     Okay. So between --

1           A.     We were coming back, and she was going out  
2     the opposite direction. We were going south, and  
3     she was going north.

4           Q.     All right. And how long had you been  
5     riding when you encountered her?

6           A.     Probably an hour, a little more.

7           Q.     So approximately what time was it, then,  
8     would you say?

9           A.     Somewhere like 6:40, somewhere in there.

10          Q.     Okay. You didn't look at your watch or  
11     anything?

12          A.     Well, not really. But I needed to hurry  
13     up to get back to where I was on Williamson Valley  
14     Road by 7:15 when it would begin to get dark.

15          Q.     All right. In fact --

16          A.     I had a sort of a time frame.

17          Q.     Do you remember when the sun went down at  
18     that time of year?

19          A.     It was not down yet. We don't ride after  
20     the sun goes down.

21          Q.     So you try to make it back in before dark?

22          A.     Exactly.

23          Q.     So you were trying to make it back by what  
24     time?

25          A.     By 7:15, 7:30 at the latest.

1           Q.    Okay. All right. And when you  
2 encountered Carol out there, did you have any  
3 conversation with her?

4           A.    Yes, we did. She was jogging toward us.  
5 And she stopped not wanting to spook the horses and  
6 walked toward us. And then we stood there and  
7 exchanged pleasantries for a bit.

8           Q.    Was this the first time you'd encountered  
9 her while you were out riding?

10          A.    No. Not the first time. We did  
11 occasionally.

12          Q.    On these evening rides?

13          A.    Yes.

14          Q.    Okay. Were you familiar with her habits  
15 at all in regard to whether she went jogging in the  
16 an evening, so to speak?

17          A.    No. Not to know whether she did it  
18 regularly or on a schedule. No.

19          Q.    Okay. But you had met her before?

20          A.    Yes. She often did that.

21          Q.    Okay. When you stopped and exchanged  
22 pleasantries, so to speak, what was she doing?

23          A.    Well, she came up to Lila's horse and was  
24 petting Lila's horse. He was the one that was a  
25 little spooky. So she and I were just talking.

1 Lila was holding her horse to keep him from moving.

2 Q. Okay. Do you remember where Carol was  
3 petting Lila's horse, first of all?

4 A. On his face.

5 Q. Do you remember what hand or hands she was  
6 using to pet Lila's horse?

7 A. No. I don't.

8 Q. Did she touch any other parts of Lila's  
9 horse besides his face, to your knowledge?

10 A. Not that I'm aware of. But she could  
11 have.

12 Q. Did she have to hold Lila's horse in any  
13 way, like grasp the bridle or anything like that to  
14 calm him down?

15 A. No.

16 Q. And do you recall what you were discussing  
17 with Carol that evening?

18 A. We talked about what a beautiful evening  
19 it was. Probably first asked how she was and how  
20 she'd been because I hadn't seen her in a few days  
21 at least.

22 Q. And then the weather and so forth?

23 A. Right. How beautiful. I remember we  
24 talked about how beautiful it was and how blessed we  
25 were to be able to have the access to the Deep

1 Well. It was such a beautiful place.

2 Q. Nice place to ride?

3 A. Absolutely.

4 Q. And good place also to go for a jog?

5 A. Uh-huh.

6 Q. Okay. How long had you known Carol?

7 A. Probably since 2001 I'm guessing. At that  
8 time I was boarding a horse at a different place off  
9 of Jockey Path. And for part of that time I rode my  
10 horse through their gate.

11 Q. Through the DeMocker gate?

12 A. Through the DeMocker's gate. Yes.

13 Q. Okay.

14 A. To get to the Deep Well.

15 Q. Did they have any pets when were you  
16 riding around the DeMocker or Kennedy residence?

17 A. Two little dogs.

18 Q. Is that right?

19 A. Yes.

20 Q. Did you know their names?

21 A. No. I've forgotten them. I did at the  
22 time.

23 Q. Okay. Were there any issues with the dogs  
24 in terms of strangers coming around, to your  
25 experience?



1 MR. SEARS: Relevance, foundation as to time.

2 THE COURT: Sustained.

3 Mr. Butner, are there more questions for  
4 the map?

5 MR. BUTNER: I think she can resume the stand  
6 now, Judge.

7 THE COURT: Again, Miss Powell, please watch  
8 your step.

9 MR. HAMMOND: Could we have the easel moved?

10 THE COURT: Yes.

11 (Pause in proceedings.)

12 Q. BY MR. BUTNER: So you'd been riding out  
13 there for a number of years, then?

14 A. Oh, yes.

15 Q. And in this ride that we've just been  
16 talking about, this was July the 2nd of 2008; right?

17 A. Correct.

18 Q. And you were talking just a moment ago  
19 about the fact that back in 2001 you had -- you used  
20 to enter the Deep Well property through the DeMocker  
21 property?

22 A. Uh-huh.

23 Q. Is that yes?

24 A. Yes, it is.

25 Q. Well, let's just talk about in 2008. Did

1 Carol Kennedy have any pets at that time, to your  
2 knowledge?

3 A. Yes. Two little dogs.

4 Q. Okay. And had you occasion to be around  
5 those two little dogs?

6 A. Yes.

7 Q. How often had you been around them prior  
8 to July 2nd of 2008?

9 A. Many. Uncounted times because if they  
10 were outside, they would come and bark if I even  
11 just rode by, walked by, drove by. Or even riding  
12 through Lila Farr's gate they would bark. They were  
13 nice little dogs. They weren't vicious.

14 Q. They didn't attack you in any way?

15 A. No. They were just barkie dogs.

16 Q. Okay. Were you familiar with these dogs?

17 A. Oh, yes.

18 Q. Familiar to pet them and so forth?

19 A. Oh, yes. Yes.

20 Q. But did they always still bark at you?

21 A. They always barked.

22 Q. Okay. Did you have occasion to see them  
23 bark at anybody else on occasion?

24 A. They barked at everybody except maybe for  
25 the immediate family. They just barked at anybody

1       that was not normally there.

2           Q.     So they would bark at you every time you  
3       went by?

4           A.     It was more a friendly bark than anything  
5       else. They barked.

6           Q.     Kind of a watch dog type bark?

7           A.     Yes.

8           MR. SEARS: Leading.

9           THE COURT: Sustained.

10          Q.     BY MR. BUTNER: Now, in 2008, had you been  
11       riding with Carol Kennedy at all?

12          A.     Not -- no. Not for a long, long time.

13          Q.     How long had it been since you'd been  
14       riding with Carol Kennedy?

15          A.     Oh, gosh. Years and years. I don't know.

16          Q.     Did she used to have a horse, though?

17          A.     Well, they had a horse named Baby  
18       primarily for the girls.

19          Q.     And what happened to the horse named Baby?

20          A.     It was given away.

21          Q.     When was that?

22          A.     Probably in 2008 sometime.

23          Q.     Okay. And had you been helping out in any  
24       way in taking care of Baby?

25          A.     Oh, as the group of women that we ride

1 with had to go together to buy some hay for Baby  
2 because Carol didn't have the money to feed the  
3 horse.

4 Q. And when was this done?

5 A. That must have been in 2008 as well.

6 Q. But at some point Carol gave the horse  
7 away?

8 A. Yes. She tried first to sell the horse  
9 and didn't have any buyers and offered the horse to  
10 me. But I already had a horse so --

11 Q. Was it a decent horse?

12 A. Very nice horse. Just hadn't been ridden  
13 in a long time.

14 Q. Was it gentle?

15 A. Pretty much but could be pretty frisky as  
16 well.

17 Q. Because of not being ridden?

18 A. Because of not being used.

19 Q. Were you ever around when the barking dogs  
20 were in the presence of family?

21 A. Yes.

22 Q. And how did they act when they were in the  
23 presence of family?

24 A. Just friendly, not barking at family. No.

25 Q. But they would bark at you?

1 A. Yes.

2 Q. And did you see them bark at anybody else?

3 A. Anybody that came by, whether they were  
4 friend or stranger.

5 Q. Okay.

6 I don't have any further questions of this  
7 witness at this time. Thank you.

8 THE COURT: Thank you.

9 Mr. Sears?

10 CROSS-EXAMINATION

11 BY MR. SEARS:

12 Q. Miss Powell, when was the last time you  
13 saw Steve DeMocker before today?

14 A. I don't remember.

15 Q. He hadn't lived at the Bridle Path address  
16 for a number of years prior to Carol's death;  
17 right?

18 A. Uh-huh.

19 Q. Is that yes?

20 A. Yes.

21 Q. And when was the last time you saw these  
22 little dogs bark at Steve DeMocker?

23 A. I never saw them bark at him.

24 Q. When was the last time you saw Steve  
25 DeMocker with these dogs?

1 A. Years ago. I don't know when.

2 Q. How many years?

3 A. I have no idea.

4 Q. Before 2005?

5 A. Maybe.

6 Q. How long had Carol had these two  
7 particular dogs in 2008?

8 A. I don't remember that either.

9 Q. Are they the same dogs she had in 2001?

10 A. I believe so.

11 Q. Do you know their breeds?

12 A. One was a bull terrier. And that's the  
13 one that was gored by javelina very seriously but  
14 was rescued and taken to the vet and was then okay  
15 after that.

16 Q. What color was that dog?

17 A. That was black and white. The other one  
18 was smaller and white.

19 Q. And when was the last time you were at  
20 Carol Kennedy's house when the dogs were there  
21 around Carol and her children?

22 A. I don't know.

23 Q. In 2008?

24 A. I don't know.

25 Q. Could it have been years?

1           A.    It could have been.

2           Q.    When did you stop riding through Carol's  
3 property?

4           A.    Probably in maybe 2003 or four.  I don't  
5 know.

6           Q.    And did you have occasion to be at Carol  
7 Kennedy's house after 2003 or 2004 for any purpose?

8           A.    Riding by there frequently.

9           Q.    When you say "riding by there," do you  
10 mean right down Bridle Path?

11          A.    Riding down Jockey Path and Bridle Path.

12          Q.    So you wouldn't go onto her property  
13 necessarily but you'd be in the vicinity of the  
14 house?

15          A.    Correct.

16          Q.    And if the dogs were out, they would bark  
17 at you?

18          A.    Correct.

19          Q.    And would the other dogs in the  
20 neighborhood bark at you as you went by?

21          A.    Not necessarily.  There was one across the  
22 street that would bark.

23          Q.    Across the street from Carol?

24          A.    Across the street from Carol on the inside  
25 of the curb.

1 Q. Did you have a dog riding with you?

2 A. No.

3 Q. Did Lila have a dog?

4 A. No. Not riding with us.

5 Q. Did you ever see Carol's dogs out on the  
6 Deep Well?

7 A. No.

8 Q. That was a particular problem. People of  
9 the Deep Well didn't want dogs out on the ranch;  
10 right?

11 A. Yes. That was one of the rules.

12 Q. That was one of the conditions of using  
13 the gate; right?

14 A. Yes.

15 Q. Because of the cattle?

16 A. Exactly.

17 Q. It was a working cattle ranch?

18 A. Yes.

19 Q. In the summer of 2008, how frequently  
20 would you and Lila ride on a weekly basis on the  
21 Deep Well?

22 A. Probably at least three times a week.

23 Q. It's sort of a standing ride in the late  
24 afternoon/evening during the summer?

25 A. Pretty much. Because it's cooler in the



1 evening.

2 Q. And you said from time to time you would  
3 run across Carol when she would be out on the Deep  
4 Well?

5 A. Yes.

6 Q. Was he ever with anyone?

7 A. No.

8 Q. Would she be jogging when you'd see her?

9 A. Yes.

10 Q. Sort of the same time of day?

11 A. Yes.

12 MR. SEARS: I have no other questions, Your  
13 Honor.

14 THE COURT: Thank you.

15 Mr. Butner, redirect?

16 REDIRECT EXAMINATION

17 BY MR. BUTNER:

18 Q. Did you encounter anybody else out on the  
19 Deep Well on July 2nd, 2008, beside Carol?

20 A. No.

21 Q. And what time did you conclude your ride?

22 A. You mean to get back to where I was  
23 boarding my horse?

24 Q. Right.

25 A. Probably between 7:00 and 7:15.

1 Q. And was the sun still up at that point?

2 A. Yes, it was.

3 Q. It wasn't dark?

4 A. No.

5 Q. Do you remember when it got dark that  
6 particular day approximately?

7 A. Not really. After that.

8 MR. BUTNER: No further questions.

9 Thank you very much.

10 THE COURT: There are no questions from the  
11 jury. I don't see any questions.

12 May Miss Powell be excused as a witness?

13 MR. BUTNER: She may.

14 MR. SEARS: Yes.

15 THE COURT: Before you go, I want to advise you  
16 about the rule of exclusion of witnesses. That's  
17 been invoked in this case. That means you cannot  
18 communicate with other witnesses in any way about  
19 your testimony or about any other aspect of this  
20 case until all witnesses have testified.

21 It is a good idea not to talk to anyone  
22 about this case until the trial is completed.  
23 However, you may talk to the attorneys as long as no  
24 other witnesses are present.

25 Do you understand that?

1 THE WITNESS: Yes.

2 THE COURT: Thank you. You are excused at this  
3 time.

4 It appears there is a question.

5 Ma'am, watch your step once again. If  
6 you'd please return. I'll speak with the attorneys  
7 at sidebar.

8 (Sidebar conference held off the record.)

9 THE COURT: Miss Powell, this question calls  
10 for a yes or no response. Did Carol say anything  
11 about Steve's coming over?

12 THE WITNESS: No.

13 THE COURT: Thank you. At this time, then, you  
14 will be excused. And remember that advice or the  
15 admonition I gave you regarding the rule of  
16 exclusion.

17 Thank you, ma'am.

18 THE WITNESS: Okay.

19 THE COURT: Counsel, I'd suggest we take the  
20 morning recess at this time.

21 Ladies and gentlemen, please be ready to  
22 resume at quarter till, almost 20 minutes. Remember  
23 the admonition. Thank you.

24 (Recess.)

25 THE COURT: The record will show the presence

1 of the defendant counsel and jury.

2 Ladies and gentlemen, I've been informed  
3 that one or two of you or some of you had a little  
4 bit of trouble hearing me. So I'm going to try to  
5 speak up. I'm going to try to get the microphone  
6 over here and speak into it.

7 Please feel free to remind me. If you're  
8 not hearing something I say  
9 , I need to know as well. Thank you very much.

10 Mr. Butner, please call your next  
11 witness.

12 MR. BUTNER: Lila Farr, please.

13 THE COURT: Miss Farr, face the clerk, raise  
14 your right hand and be sworn.

15 LILA FARR,  
16 having been first duly sworn upon her oath to tell  
17 the truth, the whole truth, and nothing but the  
18 truth, testified as follows:

19 THE COURT: Please have a seat here at the  
20 witness stand.

21 DIRECT EXAMINATION

22 BY MR. BUTNER:

23 Q. Please state your name for the record.

24 A. My name is Lila Farr, F-a-r-r.

25 Q. Where do you live, Lila?

1           A.    I live on Sunflower Drive in the Sandretto  
2    area behind big Frys.

3           Q.    Okay.  And how long have you lived there?

4           A.    Just since February.

5           Q.    Since February of 2010?

6           A.    Yes.

7           Q.    Prior to that time did you reside at a  
8    different location?

9           A.    Yes.

10          Q.    Where was that?

11          A.    That was at 2005 West Glenshandra in the  
12   Williamson Valley area.

13          Q.    How long did you live at 2005 West  
14   Glenshandra?

15          A.    About five and a half years.

16          Q.    And is that adjacent to Jockey Path?

17          A.    It's parallel to -- Jockey Path and  
18   Glenshandra ran parallel, but there are two sets of  
19   rows of houses between them.

20          Q.    And are you a horse woman?

21          A.    Yes, sir.

22          Q.    And how long have you been a horse woman?

23          A.    Since I was nine years old.

24          Q.    Okay.  And drawing your attention back to  
25   July of 2008, obviously you were a horse woman back

1 then; right?

2 A. Yes.

3 Q. What kind of a horse did you have?

4 A. I had a majorly sized quarter horse. He  
5 was about 1,300 pounds, 15.3. A hard one to ride.

6 Q. Why was he hard to ride?

7 A. Well, he was very strong. He had a lot --  
8 very little fat and a lot of muscle. And he had not  
9 been trained real adequately. So I was in the  
10 process of doing that.

11 Q. How old was he back then in 2008?

12 A. He was nine.

13 Q. And where did you keep him?

14 A. He was in my backyard.

15 Q. And that was at the Glenshandra address?

16 A. Yes.

17 Q. Did some people think that you might live  
18 on Jockey Path?

19 A. No. Except that's where I'm boarded now,  
20 since I moved.

21 Q. All right. So drawing your attention back  
22 to July 2nd of 2008, remember that particular day?

23 A. Yes, I do.

24 Q. Do you have -- did you have a habit,  
25 basically, back in that time as to when you would

1 ride your horse?

2 A. It kind of depended on the weather. We  
3 would ride when it was the coolest. It was either  
4 in the morning or at night. And that particular day  
5 it was at night.

6 Q. When you say "we would ride," did you have  
7 a riding partner or partners?

8 A. Yes. Marjorie Powell.

9 Q. On July 2nd of 2008 did you two go riding  
10 together?

11 A. Yes.

12 Q. What time of day did you go riding that  
13 day?

14 A. Well, it's hard to say when we started.  
15 We had made the loop around parallel to the Deep  
16 Well fence behind my house and then made a loop  
17 around to what we call the Glenshandra Trail now.  
18 Because it comes in from Glenshandra.

19 Q. Do you see that map over there?

20 A. Yeah.

21 Q. I got to look and see what number it is.  
22 That's Exhibit 2312 just for the record. Can you  
23 see that map clearly enough from where you're at to  
24 tell?

25 A. No. Can I put my glasses on and come

1       there?

2           Q.     Would you, please.

3           A.     Yes.

4           Q.     And if necessary, it may be that we'll --  
5       yeah.   You can step down, and we'll get you the  
6       pointer.

7           THE COURT:   Pause for just a second.

8           Q.     BY MR. BUTNER:   You're down by the map  
9       now.   Could you kind of point to where you were  
10      residing back in 2008, if you can tell.

11          A.     Probably here.   This is the Bridle Path.  
12      Bridle Path comes this way and Jockey Path comes  
13      this way.   I'm not sure if it's exactly correct.  
14      Glenshandra -- I was at the very end with my fence  
15      parallel to Deep Well Ranch.

16          Q.     Okay.   You're pointing to the end of  
17      Glenshandra.   Was there a trail head at the end of  
18      Glenshandra?

19          A.     There is a fence there that let's people  
20      in and out of the Deep Well Ranch.

21          Q.     Okay.   And then did you also have a gate  
22      at your property?

23          A.     Yes.   It was probably 200 feet from there  
24      south toward the Bridle Path address.

25          Q.     And on July 2nd of year 2008, you



1 indicated that you went riding with your partner,  
2 your riding buddy, Marjorie Powell; right?

3 A. Yes.

4 Q. Could you show us the path of the ride  
5 that you took that particular evening.

6 A. It's hard to do. It's not all on here.  
7 We name the paths according to what we can  
8 remember. We would go from the gate that I had in  
9 my backyard along behind here. And then we would go  
10 around here to eventually bring us down that path.

11 Q. Is that a fence line?

12 A. Well, there is a fence there. But the  
13 path itself is probably about 10 to 15 feet from the  
14 fence. It's a barbed wire fence with a creek on the  
15 side of it. I think this might be the creek. So we  
16 would be in this path here. About 15 feet.

17 Q. And is there any fencing out further out  
18 toward the northern part of the map there?

19 A. It's quite a ways up. It's up here at the  
20 top where there is a windmill. They sometimes have  
21 cattle there. And there is watering --

22 Q. A tank?

23 A. Tank. And we've been there and then gone  
24 across here. But that particular night we had just  
25 come up -- I don't know exactly where. Might have

1       been here. I made the loop to come here.

2           Q.     And you indicated you didn't really  
3       remember when you left for your ride that particular  
4       day; is that correct?

5           A.     Correct. I don't. Usually it's  
6       6:00 o'clock, between 5:30 and 6:00. Because that's  
7       when it begins to cool down. So it's easier for us  
8       and the horses.

9           Q.     So you were out on the trail with  
10      Marjorie. And you're riding your big quarter horse?

11          A.     Yes.

12          Q.     What's his name?

13          A.     Lad. He's now working cattle. He was bad  
14      to me one day.

15          Q.     So he got sent to work?

16          A.     Yes, he did. He now has a job.

17          Q.     Good for him. While you were out on the  
18      trail that particular day on July 2nd of 2008, did  
19      you encounter anybody?

20          A.     Just one person. That was Carol Kennedy.

21          Q.     Could you kind of point to us where you  
22      encountered her on the trail if you can see  
23      approximately there on the map.

24          A.     I'm only going by distance. But I would  
25      say somewhere in here. Every time I pass the bushes

1     now I know exactly where it was. There is some  
2     bushes out there. We stood by while we talked to  
3     her. Then she went her way and we went our way.

4             It's probably somewhere up in here. I  
5     can't tell you exactly.

6             Q.     Were you on your way back in when you  
7     encountered her?

8             A.     Yes.

9             Q.     What was she doing when you encountered  
10    her?

11            A.     She was jogging toward us. But she always  
12    stops and walks as she comes up to the horses  
13    because she doesn't want to scare them.

14            Q.     Was she experienced being around horses,  
15    to your knowledge?

16            A.     As far as I know. Because she had a horse  
17    in her backyard. And I think her children had  
18    ridden a horse before.

19            Q.     How was she dress when you saw her that  
20    particular day?

21            A.     In her jogging outfit. It was a dark blue  
22    pair of shorts and a light blue tank top, strings on  
23    the tank top.

24            Q.     Did she have running shoes on?

25            A.     I guess they were tennis shoes. I assume

1       they were running shoes.

2           Q.     Okay. And so do you know approximately  
3       what time it was when you encountered Carol Kennedy  
4       out there?

5           A.     I believe it was between 6:30 and 6:40.

6           Q.     What makes you think that?

7           A.     Well, because we try to get back soon  
8       enough for Marjorie to take a longer trip to where  
9       her horse is boarded. And mine is obviously closer  
10      because it's back up to Deep Well. Give her enough  
11      to get time where she is, untack our horses and make  
12      it comfortable for them, get them fed before dark,  
13      that kind of thing.

14          Q.     So you want to get that stuff taken care  
15      of before dark?

16          A.     And give the horses a chance to cool  
17      down.

18          Q.     All right. On this particular day, on  
19      July 2nd of 2008, when you met Carol Kennedy out on  
20      the trail, did you have any conversation with her?

21          A.     Oh, yeah. She stopped because she was  
22      jogging and then walked toward us. I, basically,  
23      wasn't the one talking to her because my horse, who  
24      is excellent other than this -- not true. I was  
25      holding the left rein because she was petting his

1 nose. And I didn't want to do his normal thing of  
2 trying to reach out and nibble.

3 So I was holding the rein and she and  
4 Marjorie were talking, for the most part. We asked  
5 her how she was. She seemed fine and was in a good  
6 mood.

7 Q. Do you recall what hand she was using to  
8 pet his nose?

9 A. I believe it was her right hand.

10 Q. Do you know what she was doing with her  
11 left hand? Were you able to see that?

12 A. No. The horse's head was in the way. I  
13 was holding it back.

14 Q. Did she grasp his bridle or anything like  
15 that?

16 A. No. She knows better than to do that.  
17 It's pretty much petting his nose. And I was  
18 keeping his lips from nipping at her.

19 Q. Lad might be a bit of a stinker?

20 A. He is. He was raised on a cattle ranch.

21 Q. So how long were you out there having  
22 conversation with Carol on July 2nd, 2008?

23 A. I would say five to seven minutes.  
24 Talking about the day, how pretty it was out there.  
25 Just a conversation.

1           Q.    And then which way did you guys go -- you  
2   and Marjorie?

3           A.    We went west and Carol went east.

4           Q.    So you went back toward --

5           A.    Back toward Glenshandra.  We were coming  
6   back to the gate at Glenshandra.  And then we went  
7   to the gate that was behind -- that's on my fence.  
8   And I let Marjorie out.  She goes down my driveway  
9   and she goes down the length of Glenshandra to where  
10  she lived with her horse.

11          Q.    Which direction did Carol go then?

12          A.    She went east.

13          Q.    Would you show us on the map which way  
14  that was.

15          A.    That would be this way.

16          Q.    So she went further out on the Deep Well?

17          A.    We thought at that point anyway that she  
18  had just started her run.  And she didn't look very  
19  tired.  That she had started her run, was on her way  
20  to finish it, go the rest of it.

21          Q.    And did you see anybody else out on the  
22  trail when were you out there riding that particular  
23  day?

24          A.    No.  Not that I recall.

25          Q.    Okay.

1           A.     Primarily that late at night, that late in  
2     the evening, there aren't too many people out there.

3           Q.     And approximately what time did you get  
4     back, then, to your place?

5           A.     I'm thinking it was about 6:40, 6:45 at  
6     the latest. Because we had to give Marjorie the  
7     time it took to get back to her place so she could  
8     unsaddle her horse.

9           Q.     Do you recall approximately what time  
10    sunset was back then on July 2nd of 2008?

11          A.     No. I'm not aware of that other than we  
12    knew the sun was going down. Kind of what we try to  
13    judge by so we have enough light to get the horses  
14    ready to eat.

15          Q.     So the sun goes down behind Granite  
16    Mountain. And does it get dark a little earlier, so  
17    to speak, than normal because of that?

18          A.     Yeah, it does. It takes away the  
19    brightness we have to get the things done that we're  
20    doing.

21          Q.     You can resume the stand. Thank you.

22                   I don't have any further questions at this  
23    time.

24           THE COURT: Thank you, Mr. Butner.

25                   Mr. Sears, cross?

1           MR. SEARS: Thank you, Your Honor. We're going  
2 to need a moment it set up the laptop. Perhaps I  
3 can have Mr. Roberts start to do that while I'm  
4 asking questions.

5           THE COURT: If we can. I don't want there to  
6 be a distraction obviously. We can try that.

7                     If anyone is having difficulty in hearing  
8 the witness or the lawyers, let me know.

9           MR. SEARS: Thank you, Your Honor.

10                    CROSS-EXAMINATION

11 BY MR. SEARS:

12           Q. Good morning. We're going to have in a  
13 few moments here some aerial photographs of the area  
14 around your house. Maybe we can see some of the  
15 details on this map.

16           A. Okay.

17           Q. Let me see if I understand what you told  
18 us so far. This year you moved out to the Sandretto  
19 Hills area?

20           A. Yes.

21           Q. Before that for about five and a half  
22 years you lived on west Glenshandra; correct?

23           A. Yes.

24           Q. Okay. And how many doors up from the  
25 fence line to the Deep Well was your home?



1           A.    It was right next to the Deep Well.

2           Q.    It's the corner?

3           A.    Yes.

4           Q.    Okay.  And is there a way -- if you were  
5 coming from the south, if you were coming from the  
6 Bridle Path Jockey Path area, can you cut through  
7 the properties between Jockey Path and Glenshandra  
8 to get to your property or do you have to go all the  
9 way around?

10          A.    You have to go all the way around.  There  
11 is a fence at the back of the Bridle Path area, and  
12 then there is nothing until you get to my gate in  
13 my -- in that property, the Glenshandra property.

14          Q.    When Miss Powell would ride over that  
15 evening, she told us here this morning that she was  
16 boarding out on Williamson Valley Road south and  
17 west of your property.  Do you know how she rode her  
18 horse that night to get to your place to start the  
19 ride?

20          A.    As far as I know, she would go -- let me  
21 think about it because it's been a while.  She would  
22 go Williamson Valley Road to Glenshandra and then  
23 come up my driveway.

24          Q.    She'd ride along Williamson Valley Road  
25 north until she got up to Glenshandra, turn east and

1 go down? She wouldn't cut through --

2 A. There was a wash to cut through, but it  
3 wasn't very safe.

4 Q. Do you have a recollection as we -- it's  
5 more than two years now. Do you have a recollection  
6 of seeing her ride up that evening?

7 A. No. I don't see her ride up anywhere  
8 other than she comes up my driveway and then we meet  
9 in front of the barn.

10 Q. Were you all communicating by phone saying  
11 I'll be over at such and such a time --

12 A. We usually do that sometime before we  
13 start getting ready. Because it takes her longer  
14 for her to tack up and get to me than it does me.

15 Q. So you've been doing this enough times  
16 that you had a rhythm?

17 A. Especially during the summer.

18 Q. So you would time it so you would be ready  
19 to go when she arrived?

20 A. When she got there. Yes.

21 Q. So she would come down your driveway. And  
22 you have your corrals in the back of your home?

23 A. Yes.

24 Q. And then you would ride from there. How  
25 would you get out of your property? The gate is on

1 the --

2 A. The gate is on the east fence.

3 Q. So your east fence line is the fence line  
4 to the Deep Well?

5 A. Yes.

6 Q. And there is a gate in there?

7 A. Uh-uh. There is a gate that was put there  
8 by the previous owner.

9 Q. Of your house?

10 A. The house. Yes.

11 Q. And that gate is locked typically?

12 A. Yes.

13 Q. Would you go over and unlock it before you  
14 would start to ride?

15 A. Yes. I would do that. And then when we  
16 left I would lock it. Because I didn't want anybody  
17 else coming in there other than the deer or the  
18 coyote.

19 Q. You couldn't lock them out?

20 A. No.

21 Q. Did your gate lock with a key?

22 A. Uh-huh. And I carry the key.

23 Q. And you're not very far, then, at all from  
24 the community gate at the end of Glenshandra?

25 A. Correct.

1           Q.    There is no reason for to you use that  
2   since you have your own gate?

3           A.    Correct.

4           Q.    Have you gone through that gate?

5           A.    I've gone through it a couple of times.  
6   Primarily I use my own gate because it's easier to  
7   get to the barn.

8           Q.    And the use of the gate at the end of  
9   Glenshandra -- was that gate in place when you  
10   acquired your property?

11          A.    Yes.

12          Q.    And did you shortly after get permission  
13   from someone to go through that gate if you wanted  
14   to?

15          A.    Yes.

16          Q.    Who did you --

17          A.    But I didn't need to because my gate was  
18   there. We primarily did not want to go out the  
19   Glenshandra gate because it's right to the asphalt  
20   road.

21          Q.    And you didn't need to do that?

22          A.    No. We didn't need to do that.

23          Q.    You lived there for five and a half years  
24   so you saw people coming and going through that gate  
25   on a regular basis; is that right?

1           A.     Yes.

2           Q.     In the summer of 2008 were you working  
3 outside the home? Did you have a job?

4           A.     No. I'm retired.

5           Q.     Were you home most of the time?

6           A.     I was home most of the time. Yeah. I was  
7 responsible for the cleaning and feeding of the  
8 horses.

9           Q.     How many horses do you have there?

10          A.     There were two.

11          Q.     Did you have any sense of who it was that  
12 was allowed to go through the community gate, how  
13 people got permission?

14          A.     No. I know that the combination was given  
15 to some people, but then it was shared with other  
16 people.

17          Q.     Did you ever see people climb through or  
18 over that gate without opening it?

19          A.     I never did. But I would see them inside  
20 walking -- people I didn't know.

21          Q.     And when you say "inside," you mean on the  
22 Deep Well?

23          A.     Yes.

24          Q.     How about people riding bicycles? Did you  
25 ever see people riding a mountain bike?

1           A.     Yes.

2           Q.     Do you know whether they had permission to  
3     be there or not?

4           A.     No, I don't.

5           Q.     Talking about the number of gates. We  
6     heard there is a community gate. You had a gate.  
7     Carol had a gate; right?

8           A.     Yes.

9           Q.     Do you know of other gates in that general  
10    area through the Deep Well fence on the Deep Well?

11          A.     I would say probably more south there  
12    might have been. Because there were trails that  
13    would lead out those gates. But I've never used  
14    them nor do I know the people who lived there.

15          Q.     Do you know a trail on the Deep Well  
16    called the "pipeline trail"?

17          A.     Yes.

18          Q.     Can you see the pipeline trail on this  
19    map?

20          A.     No. It's not.

21          Q.     In what direction does the pipeline trail  
22    run?

23          A.     It would be north and south and would be  
24    east of my fence.

25          Q.     Okay. And do you know -- is there a trail

1 head associated with the pipeline trail?

2 A. I know where a fence is that we never did  
3 go through.

4 Q. Way south if you went out one of the roads  
5 from Williamson Valley quite a ways south of  
6 Glenshandra, is there a way to get out onto the Deep  
7 Well from considerably south of where you are that  
8 you know about?

9 A. Not that I know about.

10 Q. Okay. So you've never seen the trail head  
11 with a sign that says pipeline trail?

12 A. I've seen the pipeline trail, but I've  
13 never seen cars or trucks, very seldom tire tracks.  
14 And when I did see tire tracks, I felt that it was  
15 Bob Burris or somebody he knew that was out there.

16 Q. The ranch foreman?

17 A. Uh-huh. I dealt with him several times  
18 about tire tracks that didn't belong there and  
19 people that were there and dogs that were there that  
20 shouldn't be there.

21 Q. The rancher didn't want dogs chasing his  
22 cattle?

23 A. Exactly.

24 Q. Or people that didn't have permission to  
25 be wandering around?

1 A. Exactly.

2 Q. This is a very large open area?

3 A. Yes. Wonderful place to ride.

4 Q. Yes, it is. And it goes all the way over  
5 to Highway 89; right?

6 A. Yes.

7 Q. And it goes north to the outer loop road  
8 Williamson Valley Road and 89; right?

9 A. Yes.

10 Q. And it goes quite a ways south?

11 A. Goes to pipeline, to Ponderosa -- what is  
12 it? Highway --

13 Q. Pioneer Parkway?

14 A. Pioneer Parkway. That's it.

15 Q. There you go. Okay. And there are --  
16 other than the ranch properties there are no other  
17 houses or trailers that people live in that you know  
18 of on the Deep Well?

19 A. No.

20 Q. Just thousands of acres of open range?

21 A. Yes.

22 Q. And, of course, you've seen cattle there;  
23 right?

24 A. Yes. Cattle, antelope, javelina and  
25 coyotes and deer.



1 Q. The ones that come to your house?

2 A. And eat the roses.

3 Q. And do people ever park theirs cars when  
4 you lived there at the end of Glenshandra? There is  
5 a little area before that community gate. Did  
6 people ever park their cars there that you  
7 remember?

8 A. Not very often. Not very often. Once in  
9 a while there would be a car there. But it was very  
10 seldom that they did. There wasn't much room on  
11 either side for cars.

12 Q. Did you ever see up on July 2nd a car  
13 either parked or driving at the end of Glenshandra  
14 any time of that day or evening?

15 A. No.

16 Q. Were you home later that night when there  
17 were police all over that area?

18 A. We didn't see them that night. We saw  
19 them the next morning.

20 Q. So if they were out there at night, you  
21 didn't wake up?

22 A. No.

23 Q. But they were certainly in force the next  
24 morning?

25 A. Yes.

1           Q.    You could see what they were doing?  There  
2   was yellow crime scene tape?

3           A.    Yes.  And we talked to some of the --  
4   where the two properties meet.  They were there.

5           Q.    Which two properties?

6           A.    The back of Carol's property and back of  
7   our property.  Actually, it's a little private  
8   property that belongs to the Colts.  They monitor  
9   some of that.  And from what I knew, there had been  
10  a feeling between the two people that lived there  
11  that that could be used.

12          Q.    This is obviously a very traumatic day?  
13  Something you not soon forget?

14          A.    That's right.

15          (Pause in proceedings.)

16          MR. SEARS:  Your Honor, I think we're going to  
17  be showing portions of 22-15 in evidence.  It's  
18  simply much more efficient to display them through  
19  the laptop.  They're already admitted.

20          Q.    Let me orient you, if I could, Miss Farr.  
21  This is an aerial photo.  Here's the end of  
22  Glenshandra Drive up here.  Here is the community  
23  gate.  And heading out here is Carol Kennedy's  
24  house.  Here's her house and there is her little  
25  guest house.  In this area is her barn.

1 Do you recognize this location?

2 A. Yes.

3 Q. Is this your house here?

4 A. Yes.

5 Q. Is this the Colt's house?

6 A. No. The Colt's house is a bit to the left  
7 and lower.

8 Q. This way?

9 A. No. That's Mick's house.

10 Q. Is this your barn?

11 A. That's our barn. Yes.

12 Q. Do you know who owns this property?

13 A. That's mine.

14 Q. That's your little arena?

15 A. Yes.

16 Q. So this is your back fence line?

17 A. Yes.

18 Q. And the Kennedy property actually is sort  
19 of a triangular piece. Here's a trail that goes to  
20 the gate.

21 A. That's the portion I was talking about  
22 where they kind of shared it and took care of it.

23 Q. So this gate kind of takes off from where  
24 Bridle Path goes up and turns west into Jockey Path?

25 A. Jockey Path.

1           Q.    Okay.  If somebody wanted to come into  
2   your property that knew you, if they came up Bridle  
3   Path and took this trail here, they'd have to come  
4   up and find your gate; right?

5           A.    Yes.

6           Q.    And you have to let them in?

7           A.    They would have to go through the gate  
8   that's at the back of Carol's house.

9           Q.    Okay.  And where on your fence line -- if  
10  we start here and go up, where on that fence line is  
11  your gate?

12          A.    It's in the front of the barn.  Keep  
13  going.  Right about there.

14          Q.    So you would tack up there and just  
15  ride --

16          A.    I would tack up in the barn.

17          Q.    In the barn and then just ride up there?

18          A.    Yes.

19          Q.    That date -- we can see all kinds on this  
20  photograph -- I'm going to try and zoom in a little  
21  bit here.

22               (Pause in proceedings.)

23          Q.    BY MR. SEARS:  We can see the trail here.  
24  There is any number of trails that crisscross this  
25  property here.  And I believe that when we were last

1 looking, I think your house is kind of in that  
2 area. And you can kind of go out and get on this  
3 trail.

4 Is this the general vicinity that you were  
5 riding that evening?

6 A. You know, I can't be totally for sure  
7 exactly where we went. Because you can go on that  
8 trail and hit Glenshandra and go east -- the  
9 Glenshandra Trail. Or you can come out this way and  
10 hit this one over here, what you would call the  
11 "middle trail".

12 Q. And you have a trail you call the  
13 "Glenshandra Trail" off the community gate?

14 A. Comes off Glenshandra. Right.

15 Q. And it goes more or less east and a little  
16 bit north and connects up to other trails?

17 A. Yes. It connects up with the pipeline.

18 Q. Okay. About how far from the gate is the  
19 intersection of the Glenshandra Trail you recall and  
20 the pipeline trail?

21 A. Oh, gosh.

22 Q. How long would it take you to ride it?

23 A. I would say a couple miles maybe.

24 Q. Okay. And did you go as far as the  
25 pipeline trail with Miss Powell that night?

1           A.     We were coming away from that, the  
2 pipeline trail, going toward my gate.

3           Q.     But that night did you ride out towards  
4 the pipeline trail?

5           A.     Yes.   But we probably came around the  
6 back.

7           Q.     Okay.   You made kind of a circle?

8           A.     A circle.   So when we left my gate, we  
9 would turn right.   Where we would come out on this  
10 trail right here and hit another trail that hit that  
11 one.

12          Q.     This trail here?

13          A.     Yeah.   And that one would hit another one  
14 that would make it out to the pipeline trail.

15          Q.     Okay.   And you had rides -- I image they  
16 were based on how long it took to do certain rides?

17          A.     Uh-huh.   An hour, hour and a half, most of  
18 the time.   That's at least -- because it was a nice  
19 evening and because it was not hot, we were taking  
20 as long as we could.

21          Q.     Okay.   And so you had -- other than  
22 running into Carol on your way back, how chose to  
23 your gate were you when you ran into Carol?

24          A.     We were probably horse's ride, 10 to 15  
25 minutes max.

1 Q. In terms of distance, less than a mile?

2 A. Yes. Less than a mile.

3 Q. And you didn't see any people --

4 A. When I say less than a mile, it was close  
5 to a mile. Because it would take -- where we were  
6 takes a horse a lot shorter time to get there than  
7 it does a person. So when I think about what it's  
8 made of, I would say it could be three quarters of a  
9 mile.

10 Q. Okay.

11 A. Close to that.

12 Q. You've seen Steven DeMocker before?

13 A. Yes. I have pictures.

14 Q. You didn't see Steven DeMocker that night,  
15 did you?

16 A. No, I did not.

17 Q. You didn't see anyone on a bicycle that  
18 night?

19 A. No.

20 Q. And you didn't see anyone climbing through  
21 or over the fence, through the community gate that  
22 night?

23 A. No. I didn't see anybody.

24 Q. But your sense was Carol was going out and  
25 you were coming back?

1           A.    Yes.  She was on her way out for a run.

2           Q.    You don't have any idea how far she would  
3 go out on her run?

4           A.    I would say to make it safe for her, she  
5 would not go through the bushes or anything.  So she  
6 could have gone to what we call "loop trail," which  
7 is kind of parallel to this trail you see there, but  
8 out there, and then come in to where her gate is.

9           Q.    You're just assuming that?

10          A.    Yes.

11          Q.    This is the Glenshandra Trail we're  
12 talking about?

13          A.    Correct.  That's the one we came in on.

14          Q.    You came back -- did you take this little  
15 spur?

16          A.    We probably did.  It eventually comes down  
17 to here.  And we turned right and go up there to my  
18 gate.

19          Q.    Right up the fence line?

20          A.    Yeah.

21          Q.    You came back to this junction here and  
22 turned and went down?

23          A.    Went down.

24          Q.    You never did ride your horse on this  
25 stretch of Glenshandra that night.  But you rode out



1 the same way you came back?

2 A. Well, we -- there is another way to ride  
3 out from. Instead of taking this one there is  
4 another road, another one that goes behind Carol's  
5 house. See this one right here?

6 Q. Yeah.

7 A. And then there is that one. Or you can  
8 take the one where the red light is. And see the  
9 little one over there?

10 Q. This one?

11 A. Yeah. And then it comes down there.  
12 Could have been that one too.

13 Q. What I'm really asking is that night if  
14 you remember.

15 A. I don't remember exactly. The way we can  
16 get out there are different ways.

17 Q. You're riding out that night. You're  
18 riding out this trail right here?

19 A. We're coming in --

20 Q. I'm looking for your outbound route.

21 A. Yeah. That's what I can't tell you. I  
22 can't remember. Because there is three or four  
23 different ways to get out there in order to  
24 eventually make a loop that's parallel to the  
25 pipeline or the pipeline itself.

1           Q.    So you didn't ride out this trail?  You  
2 would have been taking one of these --

3           A.    We didn't go out the Glenshandra Trail.

4           Q.    You did?

5           A.    No, we did not.

6           Q.    Here is Carol's house.  One of the ways  
7 you could have gone was kind of through the bushes  
8 here?

9           A.    Yes.  We came through my trail, came to my  
10 gate here, and then we can go to the right, hit that  
11 little trail.

12          Q.    Yes?

13          A.    And then hit another one.  See right there  
14 where your red light is?

15          Q.    On there?

16          A.    Go up a little bit more.  There is another  
17 one that goes there and eventually gets to -- there  
18 we go.  That one.  And eventually get to the one  
19 that is parallel to it right there.

20          Q.    That one?

21          A.    Yes.  That would take us towards a fence  
22 that's in Deep Well.

23          Q.    When you got to this pretty well defined  
24 trail, which way did you turn?

25          A.    That way.

1 Q. South?

2 A. I want to say we probably went that way.  
3 South. And there is a trail that goes, then, to the  
4 east that gets us into pipeline.

5 Q. We're moving the map a little.

6 A. This is very difficult.

7 Q. Isn't that the truth. If I gave you the  
8 wooden pointer, would it be possible for you to  
9 rather than me using the red light?

10 A. Yes.

11 Q. If you could stand in there. Don't fall.  
12 I'm sorry. I'm so sorry.

13 A. It's okay. I've fallen off a horse  
14 before.

15 Q. Are you okay?

16 A. Where is my house?

17 Q. Right up there. There's your barn?

18 A. The house is right here. So we could have  
19 come out this way and hit this trail or also hit  
20 this one here.

21 Q. Okay.

22 A. And then that eventually brings us to  
23 here. Can you go down a little bit?

24 Q. Sure?

25 A. To here. And then there is a trail here

1       that takes us across the meadow that -- I think it  
2       goes down further. Eventually you hit a fence.

3           Q.     This trail here?

4           A.     Here's a trail here. And eventually it's  
5       going to meet the meadow. See the meadow here?

6           Q.     There you go.

7           A.     We have a choice of to what to do. You  
8       can go this way or we can go this way and ride the  
9       pipeline.

10          Q.     Okay. So pipeline is --

11          A.     I'm thinking that maybe we did the loop,  
12       which would be this one.

13          Q.     Right here where the red dot is, that's  
14       where you make the decision whether you're going to  
15       go across the pipeline or ride up the meadow?

16          A.     Exactly.

17          Q.     Okay.

18          A.     And then if we go the pipeline, then that  
19       takes us over here to the loop line that would --

20          Q.     Let's go up a little further. I'm not  
21       sure --

22          A.     If we took the loop, it would be a shorter  
23       ride.

24          Q.     Okay. Do you remember that night what you  
25       did?

1           A.    No.  I'm just having a good time showing  
2   you guys where we go.  And then this loop -- the bad  
3   part about the loop is there is no shade.  So it  
4   depended -- on how hot we were that day would make a  
5   difference.

6                   And here's the pipeline.

7           Q.    And it's a real pipeline, natural gas  
8   pipeline?

9           A.    Yes.  And then eventually it would meet --  
10   go a little bit higher or lower.  And this is the  
11   pipeline.  Go a little bit more.  And then we're  
12   going to meet -- sometimes we'll cut across here.

13          Q.    Another big meadow?

14          A.    Like, we'll cut here.  And there is no  
15   trail there.

16          Q.    Just go cross-country?

17          A.    Yeah.  And just go across there.  And then  
18   we come to the trail that we were on when we met  
19   Carol.

20          Q.    Okay.  Is that it here in the corner?  
21   Here is the wash.  You came back on a trail that  
22   paralleled the wash?

23          A.    Yes.  I think.

24          Q.    And this is the trail that you think Carol  
25   was running on?

1           A.     Yes.

2           Q.     Okay.  So now we're heading back towards  
3 your house?

4           A.     Uh-huh.

5           Q.     And here is the wash over here.  And  
6 you're on this trail.  Stop for a second.  You can  
7 see as there is a trail on the other side of the  
8 wash?

9           A.     Yeah.  We have ridden this one before.  
10 And we never go in here because it's too dangerous  
11 and deep and not good for the horses.

12          Q.     You mean in the wash itself?

13          A.     Yeah.  In the wash.  Because there is a  
14 barbed wire fence there.  Or we'll come on this one  
15 to stay on this side of the barbed wire fence, south  
16 side of the barbed wire fence.

17          Q.     Okay.  Got you.

18          A.     And then we come down.  And that takes us  
19 to the Glenshandra gate if we go that far.

20          Q.     There it is.

21          A.     Yes.

22          Q.     But you stopped here?  Am I right?  You  
23 didn't ride -- you stopped and went down here?

24          A.     We probably came here because that takes  
25 us closer to the gate by my house.

1           Q.    Let's go back out, if we could, out this  
2 way and see if you can think where you saw Carol.

3           A.    Oh, gosh. Because I've been by there so  
4 many times.

5           Q.    Do you think it's out on this trail,  
6 though?

7           A.    Yes. I don't see the big clump. It might  
8 be out in here. Oh, gosh. I want to be exact if I  
9 can for you.

10          Q.    If you remember. It's been more than two  
11 years now.

12          A.    Yes. Every time I go by there, I know  
13 that's where it was.

14          Q.    I understand.

15          A.    I'm thinking it would be an area like  
16 this. Because my horse had stopped on this side of  
17 the -- where the bushes are. And Marge was on this  
18 side. And Carol was coming up here and stopped  
19 where my horse was and was talking to Marjorie.

20          Q.    Okay.

21          A.    As I said, I didn't pay much attention  
22 because I was holding his left rein so he wouldn't  
23 nibble Carol.

24          Q.    Were you wishing she would stop patting  
25 your horse?

1           A.    No.  I think it's very good for them when  
2 they want to.

3           Q.    And Carol seemed to know how to do it, not  
4 to stick her hand right in the horse's face?

5           A.    That's exactly it.

6           Q.    You can have a seat if you would like.  
7 Thanks.

8           A.    Sorry we're so away from where we went.  
9 We would just take a trail.

10          Q.    Looks like you have lots and lots of  
11 options?

12          A.    Right.  And recently we have named those  
13 trails so that we know when we're talking about them  
14 that's where we are.  Because if we ever got lost or  
15 hurt out there, we would want to say to somebody  
16 this is the trail I'm on.

17          Q.    Do you remember Carol being in a hurry to  
18 finish her run for any particular reason?

19          A.    No.

20          Q.    Did she say anything about having an  
21 appointment or having to get back or anything in  
22 particular?

23          A.    No.  She was in a very good mood.  She was  
24 smiling, talking.

25          Q.    Didn't seem to be in a rush?



1 A. No.

2 Q. Wasn't looking at her watch?

3 A. No.

4 Q. Did she have a phone with her?

5 A. I don't know. It's best to have one out  
6 there.

7 Q. You always have one?

8 A. Yes. In fact, when I was bucked off my  
9 horse it was good to have one.

10 Q. That was just a few week later you got  
11 bucked off?

12 A. No. That was a year ago. It was 2009.

13 Q. I read some accounts of that. You okay?

14 A. Well, I'm surviving. I'm going to  
15 celebrate life next week.

16 Q. Great. You're riding again?

17 A. Yes. Because I was a rider at nine years  
18 old. I thought that's part of my life.

19 Q. Probably wasn't the first time you were  
20 bucked off?

21 A. Well, it was the worst time.

22 Q. Had you ever been to Carol's house?

23 A. Inside? No.

24 Q. Had you ever ridden through there?

25 A. No. Because I didn't have a reason to do

1       that. I had seen her horse out on the trail with  
2       somebody else riding him.

3           Q.     Do you know how long before Carol died it  
4       was that she last had the horse at her house?

5           A.     No. Couldn't tell you that.

6           Q.     When you moved in, did she have a horse at  
7       her house?

8           A.     Yes.

9           Q.     And some time after that she got rid of  
10      it?

11          A.     Yeah. Because it was hardly ever ridden.  
12      I assumed it was the girls' horses.

13          Q.     And the girls were growing up?

14          A.     That's what happens.

15          Q.     Do you know what happened to the horse?

16          A.     She gave it away to somebody. First they  
17      couldn't get it trailered. It wouldn't go in the  
18      trailer because it hadn't been handled for a while.  
19      Eventually somebody was able to load it and take it  
20      away.

21          Q.     Do you know when that was?

22          A.     Goodness, no.

23          Q.     Had it been some time, in your  
24      recollection, that Carol had not had a horse before  
25      she died?

1           A.    Not very long.   Not very long.

2           Q.    Do you know if the horse was boarded  
3 anywhere in the neighborhood after Carol gave it up?

4           A.    I have the feeling that it was someone who  
5 lived in Chino Valley or lived away from where we  
6 are.

7           (Pause in proceedings.)

8           Q.    BY MR. SEARS:  And you had a number of  
9 neighbors here.  Did you know any of these folks  
10 particularly?

11          A.    I knew the people across the street a  
12 little bit.

13          Q.    This house?

14          A.    Yeah.  That house.  And the man next door.

15          Q.    Here?

16          A.    Yes.  I know the Colts.

17          Q.    Who lived?

18          A.    I think it's that little -- well, it was  
19 across from Carol's house.  I think it's the motor  
20 home right there.  Yeah.  The light -- up at the  
21 road.  They're on the other side of Jockey Path.

22          Q.    This one.

23          A.    Yeah.

24          Q.    That was the Colts?

25          A.    They had a circular drive.

1 Q. Is that a log home?

2 A. No. It's -- I don't know what to call  
3 it. They've lived in it for 37 years. It's a  
4 sturdy home.

5 Q. They used -- both the Colts and Carol used  
6 this path to go to the gate?

7 A. Yeah. But primarily the Colts decided who  
8 would go across there with horses. Because it was  
9 through their yard. And as far as I know right now,  
10 there is only one person that can do that.

11 Q. Who would that be?

12 A. His name is Dave. I don't know his last  
13 name.

14 Q. Dave Smith perhaps?

15 A. Could be. He lives across the street.

16 Q. There is a gate where this path goes into  
17 the fence just by the corner where you are?

18 A. Yes.

19 Q. Do you know if that gate is typically  
20 locked?

21 A. Now, it is. I don't think it was  
22 previously.

23 Q. When Carol was alive?

24 A. Yeah.

25 Q. Was there even a gate there?

1           A.    Yeah.  There is a gate.  It was one of  
2   those metal gates.

3           Q.    These folks that lived across the street  
4   from you, were they home typically?

5           A.    Typically they were there.  They were  
6   retired.  She had heart problems or has heart  
7   problems.  And we would talk to them here and  
8   there.  Once in a while she would come over and  
9   visit.

10          Q.    Did you see him on July 2nd or 3rd of  
11   2008?

12          A.    Not that I recall.

13          Q.    How about the gentleman that lived in this  
14   house here?  Was he home during the day in 2008?

15          A.    No.  He owned a cabinet company in  
16   Prescott Valley.  The only time he was at my house  
17   was to give me an estimate on cabinets.

18          Q.    So you weren't terribly close to him?

19          A.    No.  Except that our water drained into  
20   his yard.

21          Q.    Do you remember his name?

22          A.    His name is Mick.  I don't know his last  
23   name.

24          Q.    And other than that you didn't know these  
25   other folks particularly?

1           A.    No.   Actually, Mick's house, and then  
2           there is a log cabin.   And we would see them riding  
3           in Deep Well.

4           Q.    Thank you.

5                    I don't have any other questions, Your  
6           Honor.   Thank you very much.

7           THE COURT:   Thank you, Mr. Sears.

8                    Mr. Butner, do you have redirect?

9           MR. BUTNER:   Just a moment, Judge.

10                               REDIRECT EXAMINATION

11           BY MR. BUTNER:

12           Q.    You were talking with Mr. Sears about how  
13           far out on the trail you were when you encountered  
14           Carol; right?

15           A.    Yes.

16           Q.    And is there a white gate someplace out  
17           there?

18           A.    Yes.   It was before that.   It was west of  
19           that.

20           Q.    About how far west of the white gate was  
21           it?   Do you know?

22           A.    I would say about halfway from the  
23           Glenshandra gate, about.

24           Q.    So kind of midway between that white gate  
25           and the Glenshandra gate is where you encountered

1 Carol?

2 A. It might have been closer to the  
3 Glenshandra gate than the white gate, but it was  
4 moving that direction. Not that much closer.

5 MR. BUTNER: I don't have any further  
6 questions.

7 Thank you.

8 THE COURT: Ladies and gentlemen, do you have  
9 any questions for this witness?

10 I don't see any hands.

11 Counsel, may Miss Farr be excused as a  
12 witness?

13 MR. BUTNER: She may, Judge.

14 MR. SEARS: Yes, Your Honor.

15 Thank you for coming.

16 THE COURT: Miss Farr, before you leave I want  
17 to advise you concerning the rule of exclusion of  
18 witnesses. It has been invoked in this case. And  
19 that means you cannot communicate with other  
20 witnesses in any way about your testimony or about  
21 any other aspect of this case until all witnesses  
22 have testified. It is a good idea not to talk to  
23 anyone about the case until the trial is completed.  
24 However, you may talk to the attorneys if no other  
25 witnesses are present.

1 Do you understand?

2 THE WITNESS: Got that.

3 THE COURT: Thank you. Please watch your  
4 step.

5 THE WITNESS: Thank you.

6 THE COURT: Mr. Butner, do you have another  
7 witness?

8 MR. BUTNER: I do, Judge. Or do you want to  
9 take the recess at this point?

10 THE COURT: We'll go ahead and take the noon  
11 recess. Ladies and gentlemen, please remember the  
12 admonition. And please be assembled at 1:00. And  
13 we'll start as soon as we can after 1:00.

14 Thank you.

15 (Proceedings continued outside presence of  
16 jury.)

17 (Recess.)

18 (Following discussion not transcribed.)

19 THE COURT: The record will show the presence  
20 of defendant, counsel and the jury. Ladies and  
21 gentlemen, I did have another jury question. I  
22 discussed it with the parties. And, again, I  
23 appreciate that the jurors are alerting of any  
24 possible problem. This does not seem to create any  
25 kind of an issue here.



1           Mr. Butner, you may call your next  
2 witness.

3           MR. BUTNER: Thank you, Judge. I call  
4 Detective Teresa Kennedy to the stand.

5           THE COURT: Please allow the bailiff to help  
6 you with your things.

7           And raise you're right hand and be sworn.

8                   THERESA KENNEDY,  
9 having been first duly sworn upon her oath to tell  
10 the truth, the whole truth, and nothing but the  
11 truth, testified as follows:.

12           THE COURT: Please take a seat at the witness  
13 stand.

14           If you please start out by stating and  
15 spelling your full name.

16           THE WITNESS: Theresa Kennedy; T-h-e-r-e-s-a,  
17 K-e-n-n-e-d-y.

18           THE COURT: Thank you.

19           Mr. Butner, when you're ready.

20           MR. BUTNER: Thanks, Judge.

21                   DIRECT EXAMINATION

22 BY MR. BUTNER:

23           Q. What is your occupation?

24           A. I'm a detective with the Yavapai County  
25 Sheriff's Office.

1 Q. And how long have you been?

2 A. I've been a detective since about 2000.

3 Q. And how long have you been with the  
4 Yavapai County Sheriff's Office?

5 A. I have been a law enforcement officer for  
6 16 years. And I was with them a year before that in  
7 dispatch.

8 Q. And would you describe for us the  
9 training, any specialized training, you had to  
10 prepare yourself for your occupation as a law  
11 enforcement officer, first of all.

12 A. I went to the ALETA in Tucson, the Arizona  
13 Law Enforcement Training Academy. I graduated there  
14 July of 1994. That's the training I had to become a  
15 law enforcement officer.

16 Q. And then in terms of specialized training  
17 to prepare yourself to be a detective, would you  
18 describe that for us, please.

19 A. We get promoted to be a detective. And  
20 then we get our training after we get that  
21 position.

22 Q. And what training have you had?

23 A. We had have body school, interview and  
24 interrogation. I've had sex offender type training,  
25 training related to missing children and things like

1       that.

2           Q.     Okay.  Have you done a lot of sex offender  
3       and child abuse cases?

4           A.     Quite a few.

5           Q.     And have you had any specialized training  
6       concerning tracking?

7           A.     Yes, I have.

8           Q.     Would you describe that for us, please.

9           A.     Well, I've been on -- I had been on  
10      Yavapai County SWAT team for 11 years.  And we  
11      conducted in-house training, which involve sometimes  
12      tracking.  And during that 11 years I can -- went  
13      to -- or the team went to training with HSS  
14      International.

15          Q.     What is HSS International?

16          A.     That is the name of the company that put  
17      on the tracking.  I do not know what it stands for.

18          Q.     Okay.  How long was that training for  
19      tracking?

20          A.     That was I think a one- or two-day  
21      training.  And then prior to that I believe we had  
22      training with retired DPS sergeant Kelly Kasun.

23          Q.     What kind of training was that with  
24      Sergeant Kasun?

25          A.     That was also involving tracking.

1 Q. Tracking what?

2 A. Tracking fugitives.

3 Q. So tracking human beings?

4 A. Correct.

5 Q. This tracking -- what was the basis for  
6 this tracking? In terms of tracking footprints?

7 A. Yes.

8 Q. Would you describe the training, how it  
9 took place. First of all, let's talk about the HSS  
10 International tracking training. Tell us about  
11 that.

12 A. That was a team concept training where we  
13 would be using members of our SWAT team to conduct  
14 tracking. And you would have a person that would be  
15 doing the tracking, and you would have somebody with  
16 them. And you got people that would be flanking  
17 them. And you just went as a team effort.

18 Q. Okay. And what kinds of things were you  
19 looking for when you were tracking?

20 A. If you were the tracker, you were looking  
21 specifically for shoe prints. If you were the  
22 flankers, you were looking for the bad guys out in  
23 the woods.

24 Q. In other words, the people that were  
25 flankers were protective in nature?

1 A. Correct.

2 Q. And the person that was watching the shoe  
3 prints, the shoe impressions on the ground, that was  
4 the person who was actually doing the tracking?

5 A. Correct.

6 Q. And how long was this tracking? You said  
7 it was a two-day program?

8 A. One or two days. I can't recall.

9 Q. And then the tracking program with -- the  
10 tracking training with Sergeant Kasun -- would you  
11 describe that for us, please.

12 A. It was similar as the HSS training. It  
13 was held at a different location.

14 Q. Where did this take place?

15 A. That was out Williamson Valley Road  
16 about -- I think it's Fair Oaks Road about 20 miles  
17 out.

18 Q. Would you describe for us what the nature  
19 of that training was, please.

20 A. It was also to track fugitives using shoe  
21 prints to find a location.

22 Q. And have you used this training in the  
23 performance of your duties as a detective?

24 A. Yes.

25 Q. Could you give us some examples of when

1 you've used it.

2 A. We've used it as a team when there was a  
3 fugitive that shot one of our patrol officers off of  
4 McGuireville. And we ended up tracking that person  
5 and apprehending him.

6 There was a case, I think, in 2006 where  
7 the sheriff's office detectives, myself included,  
8 responded to a double homicide off of Highway 93 in  
9 the Congress area. And we did a walk through on  
10 that scene. And we had two individuals that were  
11 deceased at that location.

12 Q. What were your duties in connection with  
13 that particular case?

14 A. I was there to assist the case agent --  
15 myself and other detectives. And we did a walk  
16 through. And I was examining the area. And these  
17 vehicles were parked between some embankments. And  
18 there was some disturbance on the embankment to the  
19 north of where the vehicle was parked. And I  
20 believe that somebody had possibly left on foot in  
21 that direction.

22 Q. Did you track somebody in that case?

23 A. Yes, I did.

24 Q. Tell us how you did that.

25 A. I notified the sergeant on the scene at

1 the time that I thought somebody had gone up that  
2 embankment. And I circled around to stay out of --  
3 so I didn't disturb anything in the scene or any  
4 other potential shoe prints. And I went to the top  
5 of the embankment. I did see a shoe print there.

6 And I advised the sergeant that I would be  
7 seeing if there was any follow up to do on that.  
8 And I continued to follow the shoe print. And  
9 probably about 20 yards away -- I continued to  
10 follow the shoe print, and I saw a little spot of  
11 blood. And so I got some assistance from another  
12 detective, and we followed that shoe print and the  
13 blood trail until we located a third homicide  
14 victim.

15 Q. And do you use your tracking techniques  
16 frequently?

17 A. At work?

18 Q. No. Just in general.

19 A. Yeah. I make observations.

20 Q. Tell us about that. Tell us how you  
21 practice your tracking, so to speak.

22 A. Well, sometimes when I go hiking, I like  
23 to look at the shoe prints. And recently I was  
24 hiking on Granite Mountain and I noticed a  
25 nonaggressive type shoe print, which I thought was

1 kind of odd for that area.

2 Q. What's a nonaggressive type shoe print?

3 A. It was like a boat style shoe, kind of  
4 flat with not a lot of meat to the sole. I thought  
5 the person, if they were hiking on the rocks, would  
6 not have so much traction.

7 And so I just noticed that shoe print  
8 going up the hill, and I didn't notice it coming  
9 back. So I thought the person left the area a  
10 different way or hadn't come back yet. I think I  
11 went about a mile and a half, and here come these  
12 two guys, and here comes the shoe print. I was just  
13 watching.

14 Q. So this is sort of a hobby of yours,  
15 tracking, so to speak?

16 A. Kind of. It's interesting to me. I can  
17 tell sometimes -- like the other day after it  
18 rained, I could tell that my roommate hadn't been to  
19 the house because there were no tire tracks in my  
20 yard or shoe prints other than when I left the house  
21 earlier.

22 Q. All right. Drawing your attention to the  
23 date of July 2nd of the year 2008, were you involved  
24 in any of the investigation of the Carol Kennedy  
25 homicide?



1           A.    I was called on July the 2nd.  I didn't  
2 really become involved until July the 3rd.

3           Q.    And approximately what time did you  
4 receive notification about this particular case?

5           A.    About 11:30 in the evening on July  
6 the 2nd.

7           Q.    And what did you do in response to that  
8 notification?

9           A.    Well, originally I was told to respond the  
10 following morning.  And then on July the 3rd at  
11 about midnight 30 I was called again and told to  
12 respond to the office as soon as possible.

13          Q.    Did you do that?

14          A.    Yes.

15          Q.    What were your duties when you responded  
16 to the office?  This is the office of the Yavapai  
17 County Sheriff?

18          A.    Right.  On Gurley Street.

19          Q.    On Gurley Street here in Prescott,  
20 Arizona?

21          A.    Yes.

22          Q.    What did you do when you responded to the  
23 office?  You said at midnight 30?

24          A.    Yes.

25          Q.    12:30 in the morning; is that correct?

1           A.     That's when I got the call. I didn't get  
2 to the office until 1:40, I believe.

3           Q.     Okay. What did you do when you got there  
4 at approximately 1:40 in the morning?

5           A.     I waited for some instruction as to what  
6 they -- what my assignment was going to be.

7           Q.     Ultimately, in this particular case, did  
8 you end up responding out to the scene of the  
9 homicide on Bridle Path?

10          A.     Yes.

11          Q.     When did you do that?

12          A.     On the same day, July 3rd. I got in the  
13 area about 6:30. But I didn't really approach the  
14 property until around 8:00 o'clock in the morning.

15          Q.     And tell us what you saw when you arrived  
16 out there at about 6:30 a.m. at Bridle Path.

17          A.     There was crime scene tape across the  
18 front of the property. There were a couple people  
19 there, although I couldn't tell you who they were.  
20 But nobody was inside the property line or inside  
21 the crime scene tape that I was aware of at that  
22 time.

23          Q.     What did you do in connection with that  
24 scene once you arrive at 6:30?

25          A.     I waited for instruction as to what I was

1 going to be doing.

2 Q. Okay. Ultimately did you receive any  
3 instructions?

4 A. Yes.

5 Q. What were you asked to do?

6 A. I was told at some point prior to going on  
7 the property, I believe, because there would have  
8 been no reason for me to go on the property without  
9 having been given this information or assignment. I  
10 was told that Ms. Kennedy had gone on a run the day  
11 before. And it was my understanding that I was to  
12 track where she had gone.

13 Q. You were asked to do some tracking, then?

14 A. Yes.

15 Q. So what did you do as you began to perform  
16 that particular task?

17 A. I signed in to the crime scene. And I  
18 approached the house because I was told that you  
19 could see her body from the -- from a window or the  
20 door in the room that she was laying in. And so I  
21 crossed into the crime scene, and I approached  
22 from -- as you're facing the property or facing the  
23 driveway from the right-hand side, there is a  
24 labyrinth on that side and approached over there.

25 Q. The labyrinth being a pattern of rocks on

1 the ground?

2 A. Yes. And I approached from that side, and  
3 I got up onto the sidewalk, and I continued on the  
4 sidewalk around to the backside of the house. And I  
5 tried to examine the bottoms of Miss Kennedy's  
6 shoes.

7 Q. Were you able to do that?

8 A. I was not.

9 Q. You couldn't see from where you were at?

10 A. I could see the bottoms of her shoes, but  
11 I could not see any clear pattern.

12 Q. So what did you do after not being able to  
13 observe a clear pattern on the bottom of her shoes?

14 A. Well, her shoes resembled some running  
15 shoes I had in my car. So I returned to my vehicle  
16 using the same path and got my running shoes and  
17 went back and compared my shoes to her shoes. And  
18 they were not the same shoes. So I returned them to  
19 the car.

20 Q. That didn't work out?

21 A. That didn't work out.

22 Q. So after that failed experiment, so to  
23 speak, then what did you do?

24 A. Then I walked along the fence line. What  
25 I understood was she went for a run on the -- I

1 think it's the east side of the residence, on the  
2 backside of the house.

3 Q. Out into the open range area there?

4 A. Yes.

5 Q. Okay.

6 A. I understood she went for a run back  
7 there. So I started to walk along the barbed wire  
8 along the house looking for shoe prints. And I also  
9 checked the -- what I would use as a path to get  
10 to -- there is a crossover portion. Like, it's  
11 wooden across the fence.

12 Q. A gate, so to speak, with wooden slats in  
13 it?

14 A. Yes. There is wooden slats. I checked  
15 that area. I couldn't see any clear or definite  
16 shoe prints there. When I got to that area, I  
17 looked over that wooden fence and I saw a shoe print  
18 there. And then I got my items that I thought I  
19 would need to begin my tracking.

20 Q. Okay. Was there anything distinctive  
21 about the shoe print that you saw on the other side  
22 of the wooden slat gate?

23 A. The bottom of it on the heel, on the  
24 outside portion of the heel, had -- as you look at  
25 it on the ground, it would look like three "N's" or

1 three "Z's".

2 Q. You said you had to get some equipment  
3 before you began tracking?

4 A. Yes.

5 Q. What equipment did you get?

6 A. Well, I got my camelback, some water. I  
7 got a GPS. I got a camera. I took my flashlight  
8 and put on a long sleeve shirt, a boonie hat. I got  
9 a scale in case I needed it.

10 Q. Now, you say you got your camelback.  
11 That's for water?

12 A. Yes.

13 Q. And you got a GPS. Tell us clearly, what  
14 is a GPS.

15 A. A GPS is a global positioning system  
16 device.

17 Q. How do you use that when you're tracking?

18 A. Well, you turn it on. And typically you  
19 have to be moving to get a reading. And it has to  
20 hit -- it triangulates off of at least three  
21 satellites to get a position.

22 Q. Okay.

23 A. And you -- what I did at that time was at  
24 that location where I saw that first shoe print, I  
25 marked a way point.

1 Q. You do a signal with your GPS somehow?

2 A. You go through the pages and you find the  
3 page that says way point or route. There is several  
4 options on there. I found way point and pressed the  
5 button, made a way point. And I also took a picture  
6 of the shoe print.

7 Q. You indicated that you got a long sleeve  
8 shirt on?

9 A. Yes.

10 Q. What was the purpose of the long sleeve  
11 shirt?

12 A. Well, I didn't know where she had run.  
13 And because of the terrain and the vegetation in the  
14 back where I believe she ran, I didn't know what I  
15 was going to run into. So I don't like to be  
16 scratched up so I always put on a long sleeve shirt.

17 Q. Were you able to look at the vegetation  
18 before you went and got your shirt?

19 A. Yes.

20 Q. What did you see when you saw this  
21 vegetation?

22 A. Well, there were trees back there. There  
23 was manzanita. There was scrub oak.

24 Q. What's the significance of that kind of  
25 vegetation?

1           A.     Scrub oak and manzanita have really tough  
2 branches. I've been scratched by them before. I  
3 learned my lesson. And that's why I got the long  
4 sleeve shirt.

5           Q.     What was the purpose of your hat?

6           A.     Well, I didn't know how long I was going  
7 to be out there, and I need some shade I thought.

8           Q.     So you way pointed this first shoe print?

9           A.     Yes.

10          Q.     And that would be way point No. 1; is that  
11 correct?

12          A.     Yes.

13          Q.     Ultimately did you get a map created of  
14 this stuff that you did?

15          A.     Yes.

16          Q.     And is this a map of all of the way points  
17 that you did when you were tracking there at the  
18 Bridle Path residence and going out onto the Deep  
19 Well Ranch?

20          A.     Yes.

21          Q.     Let me show you what's been marked as  
22 Exhibit 2653.

23                   May I approach, Judge?

24           THE COURT:   Yes.

25          Q.     BY MR. BUTNER: Do you recognize that



1 particular document?

2 A. Yes.

3 Q. What is it?

4 A. It is a map that was created that shows  
5 the tracking and the way points that were created  
6 while I was following some tracks.

7 Q. All of those little marks on that map --  
8 there is different kinds of marks; right?

9 A. Yes.

10 Q. For example, there is yellow crosses?

11 A. Yes.

12 Q. What do those indicate?

13 A. The yellow crosses show a path or a route  
14 taken by what I was calling "track 2." And it would  
15 be a route going from an area near Glenshandra trail  
16 heading toward Miss Kennedy's house.

17 Q. So yellow crosses indicate track 2. There  
18 are green circles there?

19 A. Green circles are the track that I  
20 followed of Miss Kennedy's run.

21 Q. Okay. What track number is that?

22 A. That is what I called "track 1."

23 Q. Okay. Track No. 1. And then there are  
24 other marks on there too; right?

25 A. Yes.

1 Q. What are the other marks on there?

2 A. The red crosses are of track 2 leaving the  
3 area behind Miss Kennedy's house and returning to  
4 the area near the Glenshandra trail head.

5 Q. Okay. What other marks are there besides  
6 that?

7 A. There are some blue squares.

8 Q. What are the blue squares?

9 A. The blue squares indicate a bicycle track  
10 and track 2 from the Glenshandra trail head to --  
11 it's what I called "way point 27," where the bicycle  
12 tracks ended and track 2 continued on.

13 Q. And did you GPS each of those locations  
14 that were indicated by either a yellow cross or a  
15 green circle or a red cross or a blue square?

16 A. Yes.

17 Q. You used your GPS at every one of those  
18 spots?

19 A. Yes.

20 MR. BUTNER: I would move for the admission of  
21 Exhibit 2653.

22 MR. SEARS: May I have some voir dire on this,  
23 Your Honor?

24 THE COURT: Yes.

25 MR. SEARS: Thank you.

## 1 VOIR DIRE EXAMINATION

2 BY MR. SEARS:

3 Q. Detective Kennedy, as I understand from  
4 our previous discussions and disclosure in this  
5 case, you were using a hand-held GPS device that  
6 day. Correct?

7 A. Yes.

8 Q. And periodically when you got to a  
9 location, you would press a button on the device,  
10 and it would record a way point?

11 A. Yes.

12 Q. And that way point, then, would produce  
13 GPS coordinates that can also be translated onto the  
14 map you have in front of us; is that right?

15 A. Yes.

16 Q. Now, you said that way point No. 1 was at  
17 or near a shoe print impression you saw near the  
18 fence between Carol Kennedy's house and this open  
19 land; right?

20 A. It was near the wooden gate. It was on  
21 the other side of the wooden gate.

22 Q. But it was near a shoe print; right?

23 A. Yes.

24 Q. You didn't make a way point record for  
25 every shoe print impression you saw on any of these

1 tracks, did you?

2 A. No.

3 Q. And from time to time, as you were  
4 following these tracks, if you look at that map,  
5 there are places where there are a number of crosses  
6 or other marks clustered together; right?

7 A. Correct.

8 Q. You were walking around looking at things  
9 clicking your GPS; right?

10 A. I was looking at shoe prints. And when I  
11 would get to the shoe print, I would click it.

12 Q. The map you have in front of you, though,  
13 does not map each shoe print in each of the tracks  
14 you were looking at; correct?

15 A. No. I couldn't -- that would be  
16 ridiculous to put a way point on every shoe print.

17 Q. You learned later that there was another  
18 function with which you were not familiar on a GPS  
19 unit that would have allowed you simply by turning  
20 it to track function, to actually make a track and  
21 produce a map that has a smooth track as you walked  
22 along?

23 A. Yes.

24 Q. But you did just didn't know how to use  
25 that?

1           A.    I didn't even know it was turned on.

2           Q.    So you were doing it manually by clicking  
3 buttons?

4           A.    Correct.

5           Q.    You're not saying that what you have in  
6 front of you, the exhibit, is an accurate map of  
7 each shoe print impression as they existed on the  
8 ground of July 3, 2008; correct?

9           A.    Well, the GPS would -- never has pinpoint  
10 accuracy. And it was off -- not off. It was  
11 accurate within 15 feet.

12          Q.    How many way points did you mark when you  
13 were following track 1, which is Carol's apparent  
14 running route?

15          A.    I marked 18.

16          Q.    And how long was that track?

17          A.    How long was her track?

18          Q.    Yes.

19          A.    To and from?

20          Q.    Yes.

21          A.    Approximately three miles.

22          Q.    So you marked 18 places in three miles?

23          A.    Yes.

24          Q.    How many shoe print impressions were there  
25 actually on the ground?

1 A. A bunch.

2 Q. What's a bunch?

3 A. Don't know.

4 Q. Hundreds?

5 A. Probably.

6 Q. Thousands?

7 A. That I don't know.

8 Q. The 18 places that you choose to mark were  
9 important how?

10 A. Because I was following her trail. And  
11 she was on an -- she seemed to be on an actual  
12 path. And I was trying to make sure that I got back  
13 to the same location if I needed to. And I was  
14 following where she turned on certain routes on the  
15 trail.

16 Q. So you just randomly picked a spot and  
17 said I'll make a way point here?

18 A. Yes.

19 Q. And 18 of them over three miles?

20 A. Yes.

21 Q. And in between each of those 18 points is  
22 what distance, how far apart?

23 A. In between the 18 would be a mile and a  
24 half plus probably a tenth. So probably a mile and  
25 .75. I don't know.

1 MR. BUTNER: Excuse me, Your Honor.

2 Objection. I think we're way beyond the scope of  
3 voir dire at this point.

4 MR. SEARS: This is described as a map, Your  
5 Honor. I'm trying to inquire as to whether this is  
6 really a map at all.

7 THE COURT: You may continue, Mr. Sears.

8 MR. SEARS: Thank you, Your Honor.

9 Q. Did you have a particular distance between  
10 each way point that you used between No. 11, and  
11 No. 12, No. 13 and 14?

12 A. Are you asking me if I went a tenth of a  
13 mile and hit a way point?

14 Q. That would be one way to do it. Yes.

15 A. No.

16 Q. So they're just random?

17 A. Yes.

18 Q. And the same for the other tracks?

19 A. Yes. Except I think if you're asking me  
20 if I'm just pressing them just to press them, no. I  
21 was following a track. I was on that track when I  
22 was pressing them.

23 Q. So would it be fair to say, Detective,  
24 that for track 1, for what you thought was the route  
25 Carol was running on, you simply have created a line

1     that approximates where she went out and where she  
2     went back as opposed to trying document every foot  
3     fall going out and every foot fall coming back;  
4     right?

5           A.     Yes.    Because it would be ridiculous to  
6     mark a way point on every foot fall.

7           Q.     And you didn't know how to use the track  
8     line?

9           A.     I did not use the track function.   No.

10          Q.     Thank you.

11                   Foundation, Your Honor.

12          THE COURT:   Mr. Butner?

13          MR. BUTNER:   Judge, there was adequate  
14     foundation for the admission of the map long before  
15     he completed his voir dire.

16          THE COURT:   One what aspect of the foundation?

17          MR. SEARS:   It's not a map at all.   It is  
18     simply a record of random way points chosen by  
19     Detective Kennedy along a route.   It does nothing to  
20     address the question of what it's actually mapping.  
21     It's -- for example, on the three-mile track it's 18  
22     points.

23          THE COURT:   It may relate to the label.   I'm  
24     going to overrule the objection.

25          MR. BUTNER:   Thank you, Judge.   Is it admitted



1 into evidence at this time?

2 THE COURT: It's being offered, and it is  
3 admitted.

4 MR. BUTNER: Thank you.

5 (Exhibit 2653 admitted.)

6 THE COURT: That number again is 2653?

7 MR. BUTNER: Thank you. Yes.

8 DIRECT EXAMINATION (Continued)

9 BY MR. BUTNER:

10 Q. Let's talk about this. You've already  
11 talked extensively. I'm going to take this away and  
12 put it on the overhead. Learned something earlier  
13 today which might help.

14 The laser pointer is right here. You  
15 recognize the map, 2653; right?

16 A. Yes.

17 Q. Okay. Would you point to where the Bridle  
18 Path residence is located on the map.

19 A. I can't hardly see on that map.

20 THE COURT: If it's easier to step down.

21 Q. BY MR. BUTNER: You can step down.

22 A. The picture is so horrible I can't really  
23 tell. But it should be -- it should be right in  
24 this area.

25 Q. And is that where you put your first way

1 point, so to speak?

2 A. Not at the house. It would have been down  
3 the fence line. So if that's the house, then the  
4 first way point -- I can't really tell on this  
5 picture -- would be the green dot you see down here.

6 Q. It's one of those green dots?

7 A. Yes.

8 Q. And those green dots -- you testified  
9 earlier about those when you were being examined by  
10 Mr. Sears?

11 A. Yes.

12 Q. Each of those green dots represents what?

13 A. A way point where I followed track 1,  
14 which is what I believe to be Miss Kennedy's running  
15 path.

16 Q. And you would periodically as you were  
17 following that path -- is that when you would  
18 actuate the GPS and make a way point?

19 A. Yes.

20 Q. What was it that caused you to actuate the  
21 GPS at any particular point?

22 A. In some instances -- well, the first  
23 one -- that's the green dot. The first one was  
24 because that's where I noticed the first shoe  
25 print. So I took a picture there.

1           And then there were certain curves in  
2 this -- not that you can see it. Like up here where  
3 you see a trail. This also was following a trail.

4           Q.     Okay.

5           A.     So I just wanted to confirm that I was  
6 following the same track. That's why I hit a way  
7 point.

8           Q.     So what time did you start this tracking  
9 process on the three "Z's" shoe?

10          A.     A little bit before 9:00 o'clock, I  
11 believe.

12          Q.     And show us the route on the map there, if  
13 you would, please, that you followed, when you  
14 tracked the three-Z shoe prints?

15          A.     Okay. If that's the first circle dot, I  
16 went from here this way and out. And the shoe went  
17 here to here. And then there is a pipe fence here  
18 which came back here. And she came -- the person  
19 came on the same route back.

20          Q.     The three-Z footprints?

21          A.     Correct. Like this.

22          Q.     And at those way points where the green  
23 circles are located, did you take photographs?

24          A.     I took photographs on some of them.

25          Q.     Did you take a photograph at No. 1?

1 A. Yes.

2 Q. Let me show you what's been marked as  
3 Exhibit No. 2515.

4 I'd ask --

5 May I, Judge?

6 THE COURT: Yes.

7 Q. BY MR. BUTNER: Recognize that particular  
8 photograph?

9 A. I recognize the photograph. Without  
10 having the photograph number I won't know at which  
11 way point I took this picture.

12 Q. So you need to know a photograph number?

13 A. Yes. I took picture No. 1473 at way  
14 point 1. Can I look at the back of this?

15 Q. Is there a photograph number on the back?

16 A. Yes, there is.

17 Q. What number is it?

18 A. It's 1473. I would have taken that at my  
19 first way point.

20 Q. Okay. And is that a picture of the  
21 three-Z shoe?

22 A. Yes.

23 Q. Is it hard to see the three "Z's" on that  
24 particular photograph?

25 A. Because I know what I'm looking for, no.

1 But somebody else might have a harder time looking  
2 at it.

3 Q. Okay.

4 I would move for the admission of Exhibit  
5 No. 2515.

6 MR. SEARS: May I see 2515, please, Your  
7 Honor?

8 THE COURT: Yes.

9 VOIR DIRE EXAMINATION

10 BY MR. SEARS:

11 Q. Detective, 2515 is the photograph you took  
12 at way point No. 1 just over that wooden slatted  
13 gate?

14 A. Yes.

15 Q. That's your flashlight in the picture?

16 A. Yes.

17 Q. Now, looking at this picture, which  
18 portion of this impression, the bottom or the top,  
19 do you believe is the heel of this impression?

20 A. What are you calling the top and what are  
21 you calling the bottom?

22 Q. The top would be -- well, I have it turned  
23 differently. Let's turn it that way, 90 degrees  
24 that way. Yes. For purposes let's call that the  
25 top.

1 A. Okay. Then that's the heel.

2 Q. And the toe at the top; is that right?

3 And this impression was heading out from the Bridle  
4 Path house out into the open lane?

5 A. Yes.

6 Q. How far from the wooden slats was it?

7 A. It was just over.

8 Q. Were there any similar impressions that  
9 you saw on the Carol Kennedy owned side of that  
10 fence?

11 A. No.

12 Q. On her property?

13 A. Nothing that was clear that I would see.  
14 No.

15 Q. This is where it began?

16 A. Yes.

17 MR. SEARS: No objection.

18 THE COURT: 2515 is admitted.

19 (Exhibit 2515 admitted.)

20 Q. BY MR. BUTNER: May I publish, Judge?

21 THE COURT: Yes.

22 DIRECT EXAMINATION (Continued)

23 BY MR. BUTNER:

24 Q. You can resume your seat. You've got the  
25 laser pointer still; right?

1 A. Yes.

2 Q. Would you point to the area where the  
3 three "Z's" are located on this particular  
4 photograph.

5 A. It would be right there.

6 Q. All right. Thank you. And then you went  
7 from way point No. 1 to the next way point; right?

8 A. Yes.

9 Q. Were they numbered consecutively like  
10 that?

11 A. The way points?

12 Q. Yeah.

13 A. Yes.

14 Q. So you went to way point No. 2; is that  
15 correct?

16 A. Yes.

17 Q. Did you take a photograph there?

18 A. Yes.

19 Q. Let me show you what's been marked as  
20 Exhibit No. 2516 and ask if you can identify that  
21 particular photograph.

22 A. Yes.

23 Q. Tell us about that.

24 A. That would have been the photo I took at  
25 way point 2.

1           Q.     Would you point to way point 2 on the map,  
2     if you can.

3           A.     Should be right there.

4           Q.     What was the trail like at that particular  
5     point?

6           A.     Well, some of it is a little bit washy.  
7     So it's more sandy. There were points where you  
8     couldn't get a real clear shoe impression. And this  
9     one was a pretty clear shoe impression so I took a  
10    picture of it.

11          Q.     And what was the vegetation like in that  
12    particular area?

13          A.     There was scrub oak trees, manzanita. But  
14    where she was running was a pretty clear path. It  
15    wasn't like she was running through brush or  
16    anything.

17          Q.     So it was a traveled path?

18          A.     Seemed to be. Yes.

19          MR. BUTNER: I would move for the admission of  
20    the Exhibit 2516.

21          MR. SEARS: Voir dire, Your Honor?

22          THE COURT: Yes. Mr. Sears, do you have the  
23    exhibit?

24          MR. SEARS: I have my own copy.

25          THE COURT: Yes, you may.



## 1 VOIR DIRE EXAMINATION

2 BY MR. SEARS:

3 Q. Detective, how far is way point No. 2 from  
4 way point No. 1?5 A. I do not know. If you got the GPS points  
6 and calculated those out, the GPS point from No. 1  
7 to No. 2, it could be figured out.8 Q. From your recollection, is it a hundred  
9 feet?

10 A. I don't know.

11 Q. No idea whatsoever?

12 A. If I got the GPS points, I could find out  
13 for you.14 Q. As we sit here today -- this is the  
15 trail. We're here with the jury. You can't tell us  
16 today how far way point No. 1 is from No. 2 without  
17 doing the GPS calculation?

18 A. I did not measure it. No.

19 Q. How many other possible shoe print  
20 impressions did you see between the one you  
21 photographed at way point No. 1 and the one you  
22 photographed at way point No. 2?

23 A. Hers. Just one.

24 Q. How many actual shoe prints impressions  
25 did you see on the ground?

1           A.     So you're asking me again how many times  
2 she took a step? Is that what you're asking?

3           Q.     Yes.

4           A.     I don't know.

5           Q.     Were there any?

6           A.     Yes.

7           Q.     More than 20?

8           A.     I don't know.

9           Q.     But you photographed this particular one,  
10 this one being proposed Exhibit 2516 for some  
11 reason; right?

12          A.     Yes. It was a clear shoe print. When I  
13 track, I need to take a picture of a shoe print in  
14 case I run into something else to compare it. These  
15 are working photos of shoe prints which I,  
16 basically, took for comparative reasons.

17          Q.     So you were not attempting to document the  
18 actual track with your camera; correct? You were  
19 not attempting to show us the actual track that you  
20 went on by taking these random photographs; correct?

21          A.     I was taking these for comparative  
22 purposes of the track I was following at that time.  
23 I was using the GPS to, basically, try and create a  
24 path or a route that she was on.

25          Q.     What other shoe print impressions did you

1 see on the ground between way point No. 1 and way  
2 point No. 2 that you didn't think were associated  
3 with this track?

4 A. Mine. That was it. Just mine. There  
5 were hers and there were mine.

6 Q. How about animal footprints?

7 A. You asked me shoe prints, did you not?

8 Q. I'm asking a second question.

9 A. Animal prints?

10 Q. Yes.

11 A. Did I see animal prints? I wasn't  
12 focusing on animal prints. I was focusing on this  
13 shoe print.

14 Q. Other than yours and the ones that were on  
15 this track, you saw no other shoe print impressions  
16 between way point 1 and way point No. 2?

17 A. Not that I recall. No.

18 Q. Were you simply looking down at the  
19 track? Were you looking left and right as you moved  
20 from way point No. 1 to way point No. 2?

21 A. Yes. Nothing that I saw was as clear as  
22 this, looking left to right, if I'm understanding  
23 your question correctly.

24 Q. Did you see shoe print impressions between  
25 way point No. 1 and way point No. 2 that were, in

1 your opinion, as clear or clearer than proposed  
2 Exhibit 2516?

3 A. I don't recall.

4 Q. And if you did, you didn't document them;  
5 correct?

6 A. No. I took a picture of -- this would be  
7 the second picture I took, if that's what you're  
8 asking me.

9 Q. Without the GPS calculations you can't  
10 tell us where on the ground 2516 is; correct?

11 A. What's 2516? This picture?

12 Q. The one we're talking about.

13 A. It's right there at way point No. 2.

14 Q. You can't tell us other than it's under  
15 one of those green dots -- you can't tell us in feet  
16 or inches where it is from any other fixed point;  
17 correct?

18 A. No.

19 MR. SEARS: Foundation.

20 THE COURT: What aspect?

21 MR. SEARS: I think, Your Honor, she's  
22 attempting to use these photographs to show that  
23 there was a trail of shoe prints. There has to be  
24 some foundation about how photograph 2515 in  
25 evidence relates to 2516. She simply said it's a

1 random shoe print some unspecified distance from  
2 2515 and nothing further.

3 She can't locate it on the ground. She  
4 can't locate it any other fixed object. She can't  
5 tell you how far it is from 2515. It's simply a  
6 random shoe print.

7 THE COURT: Overruled. 2516 is admitted.

8 MR. BUTNER: Thank you.

9 (Exhibit 2516 admitted.)

10 DIRECT EXAMINATION (Continued)

11 BY MR. BUTNER:

12 Q. These photographs are going -- these  
13 footprints are going out away from the Bridle Path  
14 residence; is that correct?

15 A. Yes.

16 Q. Would you turn this whichever direction is  
17 correct for me, please.

18 A. This is the heel. She would be going in  
19 that direction.

20 Q. This is the heel on the left side of the  
21 picture?

22 A. Yes.

23 Q. Would you point to the heel for us,  
24 please.

25 A. It's over here.

1           Q.     That's where you were looking at the three  
2     "Z's"?

3           A.     Yes.

4           Q.     Let me show you what's been marked as  
5     Exhibit No. 2517. Do you recognize this particular  
6     exhibit?

7           A.     Yes.

8           Q.     What is that?

9           A.     That is -- that would be the picture that  
10    I took at way point No. 3.

11          Q.     Okay. And would you point way point No. 3  
12    out for us, please.

13          A.     Should be right there.

14          Q.     Is this still going away from the Bridle  
15    Path residence?

16          A.     Yes.

17          Q.     Was there a particular reason why you took  
18    that photograph at that location?

19          A.     Just to show the sole again for  
20    comparative purposes.

21          Q.     So to continue your tracking?

22          A.     Yes.

23          Q.     You put your flashlight down there beside  
24    the photograph. Why did you do that?

25          A.     I did that because -- I used it as for a

1 scale reference, basically.

2 Q. To make sure you had the same size  
3 footprint, same sole, that kind of thing?

4 A. Right.

5 THE COURT: I would move for the admission  
6 of -- is that the same photograph we had? This is  
7 Exhibit No. 2517. I would move for the admission of  
8 Exhibit 2517 at this time.

9 THE COURT: Mr. Sears?

10 MR. SEARS: No objection, Your Honor.

11 THE COURT: 2517 is admitted.

12 (Exhibit 2517 admitted.)

13 Q. BY MR. BUTNER: In addition to the three  
14 "Z's," I take it there -- at which side of this  
15 photograph?

16 A. You can't see them in that paragraph.

17 Q. Okay. Let me show you what's been marked  
18 as Exhibit No. 2518. Do you recognize this  
19 particular photograph?

20 A. This would have been the photo I would  
21 have taken at way point No. 4.

22 Q. Okay. And would you use the pointer to  
23 show us where way point No. 4 is.

24 A. Right there, I think.

25 Q. It's kind of buried in some of the other

1 marks; is that correct?

2 A. Yes.

3 Q. And we have another map that we'll get to  
4 in a few minutes. But you took that as part of your  
5 continuing tracking of those three-Z shoe prints; is  
6 that correct?

7 A. Yes.

8 Q. Okay.

9 I would move for the admission of Exhibit  
10 No. 2518.

11 MR. SEARS: Is that photograph 476, Your  
12 Honor?

13 MR. BUTNER: Yes.

14 MR. SEARS: Thank you. May I have a question  
15 or two?

16 THE COURT: Yes.

17 VOIR DIRE EXAMINATION

18 BY MR. SEARS:

19 Q. Detective, on this particular photograph,  
20 2518, there appears to be some debris, some leaves  
21 and small twigs that cover a portion of the  
22 impression; is that right?

23 A. Yes.

24 Q. Can you explain to me how the leaves and  
25 twigs and debris came to be on top of this



1 impression.

2 A. Well. I can give you what I think it  
3 could be. Is that what you would like?

4 Q. Well, sure.

5 A. Okay. She could have stepped on them.  
6 They may not have come there after. She may have  
7 stepped on them. And there is one leave in here  
8 that's cracked. So that would be why I would think  
9 she stepped on it.

10 Q. Are they maybe on her impression because  
11 the impression is old?

12 A. I don't think so. But you asked for my  
13 opinion. I don't think it's an old impression.

14 Q. Can you say to any degree of professional  
15 certainty that of the first photograph we look at,  
16 they were all made at or about the same time?

17 A. I believe so.

18 Q. And do you have any particular training or  
19 expertise or skill in aging shoe print impressions  
20 in the dirt?

21 A. You had asked me that before. And it  
22 appeared to me it had rained before these shoe  
23 impressions were made. And so that's why I say --  
24 that's why I believe these were made after the last  
25 time it rained out there.

1 Q. You see in the photograph 2518 for  
2 identification no mud or water, indication of rain  
3 in that photograph; correct?

4 A. I see dirt. I see a shoe print in dirt.

5 Q. Dry dirt; correct?

6 A. Yes.

7 Q. My question stands. Do you have training,  
8 skill or expertise in aging shoe print impressions  
9 in the earth?

10 A. No.

11 MR. SEARS: Foundation, Your Honor.

12 THE COURT: Overruled.

13 2518 is admitted.

14 (Exhibit 2518 admitted.)

15 DIRECT EXAMINATION (Continued)

16 BY MR. BUTNER:

17 Q. What was it that caused you to think that  
18 it had rained prior to the time the shoe prints were  
19 made?

20 A. Well, there were a couple of things. It  
21 was rainy in '08 in July. It had been raining in  
22 this area. I don't know if it was raining there  
23 particularly. However, I had been told during this  
24 investigation that neighbors had said it had rained.

25 MR. SEARS: Hearsay, Your Honor.

1 THE COURT: Sustained.

2 Q. BY MR. BUTNER: What was it that you  
3 personally observed that caused you to think that it  
4 had rained prior to the time of the shoe prints?

5 A. I personally observed when I set out on  
6 tracking this that the earth, the ground, was  
7 somewhat crusty, as it gets after it rains. And  
8 depending on how much it rains, there may or may not  
9 be mud. But the earth will get crusty, and there  
10 are droplet impressions in the ground. And if  
11 somebody steps on them, it's going to make it look  
12 fresh, somewhat like a clean slate, if you will,  
13 depending on how much it rains.

14 As I was saying earlier, it rained on my  
15 house and the droplet impressions were similar. So  
16 I knew that somebody drove into my are yard, which  
17 was me; and somebody left my yard, which was me.  
18 And it kind of crushed it down. And so that was my  
19 observation there.

20 Q. And you indicated earlier that you weren't  
21 able to find any shoe print impressions from these  
22 three-Z shoes inside of the fence at the Bridle Path  
23 property. Was there a reason for that?

24 A. Well, the covering in the ground, on the  
25 ground, inside the path had areas where there was

1 vegetation like leaves and things like that and  
2 sandy. And it just wasn't a very good area to see a  
3 clear shoe impression.

4 Q. It wasn't conducive to making an  
5 impression on the ground?

6 A. Not that I could find one. No.

7 Q. Okay. Ultimately did you find some other  
8 impressions inside the Bridle Path property?

9 A. Other than this shoe print?

10 Q. Yes.

11 A. Yes.

12 Q. Where were those located?

13 A. Those were located behind the residence.

14 Q. And were they the same as those shoe  
15 prints with the three "Z's"?

16 A. No, they were not.

17 Q. Where were they located at the Bridle Path  
18 residence, if you could describe for us these other  
19 shoe impressions?

20 A. They were located on the east side of the  
21 residence inside the barbed wire fence within 10  
22 feet, I would say, the ones I could see. In that  
23 area as well there was a lot of vegetation, dead  
24 leaves, things like that on the ground.

25 There was, I guess, like, a bare patch of

1 dirt where you could actually see a shoe  
2 impression. They were, like I said, behind the  
3 house. And they would have been more towards the  
4 northeast corner but not exactly at that corner but  
5 more towards that side of the house before the  
6 cement.

7 Q. Did you ultimately come to call those shoe  
8 print impressions "track No. 2"?

9 A. Yes.

10 Q. And did you see those shoe print  
11 impressions someplace else when you were tracking  
12 the three-Z footprint?

13 A. Yes, I did.

14 Q. Where did you see those shoe print  
15 impressions?

16 A. The shoe prints that were known as track 2  
17 were at way point No. 6 and --

18 Q. Could you point to way point No. 6 on the  
19 map.

20 A. If I had a different map to look at, it  
21 would be easier for me.

22 Q. So you can't really tell which way point  
23 it is on this map?

24 A. It's very difficult because there are so  
25 many marks in there that are so close together.

1           Q.    Okay.  Why don't we come back to that.  
2   Nevertheless, track No. 2 appeared at way point  
3   No. 6?

4           A.    Yes.

5           Q.    Let's move along with the three-Z  
6   footprint for a moment.  Let me show you what's been  
7   marked as Exhibit No. 2519.  Do you recognize what's  
8   depicted in that particular exhibit?

9           A.    The impression of track 1.

10          Q.    Okay.  And where was that particular  
11   photograph taken?  I'm showing a different one to  
12   the jury right now.

13          A.    This would have been taken at way point  
14   No. 5.

15          Q.    And showing you the map again, can you  
16   point out where way point No. 5 is on this big map.

17          A.    I'm --

18          Q.    You're having trouble?

19          A.    It's very difficult because of all the  
20   crosses and the other dots.

21          Q.    Okay.  Let's just try to go to the smaller  
22   map at this juncture.  Let me show you what's been  
23   marked as Exhibit No. 2647.  I'm not showing this to  
24   the jury yet at this point in time.  Do you  
25   recognize this particular map?

1 A. Yes.

2 Q. What is it?

3 A. It is, basically, an inset version of  
4 this. It would be this area here.

5 Q. So it's the smaller area, so to speak,  
6 behind Bridle Path?

7 A. Yes.

8 Q. All of these marks on here -- the red  
9 "X's" and the green circles and the blue squares  
10 and the yellow "X's" -- are those the same marks  
11 that are depicted on the larger map there?

12 A. Yes.

13 Q. But you don't have all of them depicted;  
14 is that correct?

15 A. No. Because that map doesn't show this  
16 out here.

17 Q. Okay.

18 MR. BUTNER: At this point I would move or the  
19 admission of Exhibit No. 2647.

20 THE COURT: Mr. Sears can see that?

21 MR. SEARS: I can, Your Honor. May the record  
22 show my continuing objections to foundation for  
23 these way points?

24 THE COURT: I understand you made those  
25 objections regarding this. So with regard to this

1 exhibit, overruled. But I won't have a continuing  
2 objection. If you already made them, you just need  
3 to know that.

4 MR. SEARS: Thank you. Same objection.

5 MR. BUTNER: Thank you. Is 2647 admitted, Your  
6 Honor?

7 THE COURT: Yes. It is admitted.

8 (Exhibit 2647 admitted.)

9 Q. BY MR. BUTNER: Before I show the jury  
10 this I want to establish what is the far green way  
11 point out there, Detective Kennedy, on the exhibit  
12 that's on the overhead at the present time?

13 A. This one?

14 Q. Yes.

15 A. That's the furthest point I tracked  
16 track 1 to where the shoe print turned around and  
17 went this way, this way and this way and then back  
18 in.

19 Q. What is out at that point?

20 A. There is a white metal gate out there.  
21 And there is a two-track road that runs this  
22 direction and through.

23 Q. A straight road that runs to that white  
24 metal gate?

25 A. It runs through the gate as well. Yes.



1 Q. Did you track the three-Z footprint all  
2 the way out to that white metal gate?

3 A. Yes.

4 Q. And then it turned around and came back?

5 A. Yes.

6 Q. And let's now go to this easier diagram to  
7 follow.

8 (Pause in proceedings.)

9 MR. SEARS: Your Honor, we're having a  
10 continuing problem with Mr. DeMocker not being able  
11 to see. I would like him to be able to see.

12 THE COURT: That's not in use. You need to  
13 take that down. I'm suggesting perhaps maybe some  
14 of the jurors on this end might need to move. I  
15 don't know.

16 (Pause in proceedings.)

17 Q. BY MR. BUTNER: Looking at this smaller  
18 map -- you've got your laser pointer; right?

19 A. Yes.

20 Q. First of all, would you point to -- let's  
21 just go through the tracks again. Would you point  
22 to track 1.

23 A. Track 1 is these dots here.

24 Q. Okay. Go slow. Track 1 is right there;  
25 right?

1           A.     Uh-huh.

2           Q.     And then that's track 2; is that correct?

3           A.     This is track 1 here. All the green dots  
4 are track 1.

5           Q.     That's right. I mean way point 1.

6           A.     This is way point 1, 2, 3, 4, 5, 6.

7           Q.     There is 6. Okay. And I see that 6 is  
8 also -- it has a yellow "X" beside it. What does  
9 that indicate?

10          A.     That is way point No. 30, which indicates  
11 track 2.

12          Q.     Let me show you what's been marked as  
13 Exhibit No. 2520. Wait a minute. I'm getting ahead  
14 of myself here. Let me back up for just a moment.  
15 Showing you what's been marked as Exhibit No. 2519,  
16 where did you indicate that was?

17          A.     Way point 5.

18          Q.     Okay. And you pointed to the map to show  
19 us where way point 5 is?

20          A.     Right there.

21          MR. BUTNER: I would move for the admission of  
22 Exhibit No. 2519.

23          MR. SEARS: May we have a photo number for  
24 2519, Your Honor?

25          THE COURT: Yes.

1 MR. BUTNER: Photo No. 1477.

2 MR. SEARS: Thank you. No objection.

3 THE COURT: 2519 is admitted.

4 Q. BY MR. BUTNER: And then let me show you  
5 what's been marked as Exhibit 2520. Do you  
6 recognize what's depicted in that particular  
7 exhibit?

8 A. Yes. It's track No. 2.

9 Q. Is there another track also in that  
10 particular photograph?

11 A. Yes.

12 Q. That's track 2?

13 A. It's track 2 on top of track 1.

14 MR. BUTNER: I'd move for the admission of  
15 Exhibit 2520 at this time.

16 MR. SEARS: Photo number, please, Your Honor?

17 MR. BUTNER: 1478.

18 MR. SEARS: Voir dire, Your Honor?

19 THE COURT: Okay.

20 VOIR DIRE EXAMINATION

21 BY MR. SEARS:

22 Q. Looking at Exhibit 2520, let me ask you  
23 this first: You are not an expert in shoe print  
24 impression comparison evidence; is that correct?

25 A. No. Yes.

1 Q. That is correct?

2 A. Correct. I'm not an expert.

3 Q. Okay. And your expertise is in tracking,  
4 as you describe; right? Your expertise is in  
5 tracking; correct?

6 A. I have not been qualified in court as an  
7 expert. But yes. I've had tracking training.

8 Q. You're here testifying as a tracker today;  
9 correct?

10 A. I'm testifying to tracking today. Yes.

11 Q. And this photograph here of an impression  
12 in the ground -- do you have the qualifications and  
13 expertise to identify two separate shoe print  
14 impressions in this photograph? Do you have such  
15 training and expertise?

16 A. I can see that there is two different shoe  
17 prints in the picture. Yes.

18 Q. And the further question is do you  
19 recognize one of the shoe print as the one that you  
20 were tracking on what you call track 1?

21 A. Yes.

22 Q. Okay. In this photograph is there  
23 sufficient detail of the other shoe print to  
24 indicate that it constitutes the trail that you  
25 tracked as track 2?

1           A.     Yes.

2           MR. SEARS:   Your Honor, could we approach?

3           THE COURT:   Okay.

4                     Ladies and gentlemen, again please feel  
5     free to stand and stretch while we have the  
6     sidebar.

7                     We'll take the recess rather than do  
8     that.

9                     Detective, you may step down.   Please  
10    watch your step.

11                    Ladies and gentlemen, we'll recess for  
12    about 20 minutes.   Please be prepared to resume at  
13    20 till.   Thank you.

14                    And I'll ask the parties to remain,  
15    please.

16                    (Proceedings continued outside presence of  
17    jury.)

18           THE COURT:   We're still on the record.   The  
19    jury has exited.   The attorneys and Mr. DeMocker are  
20    present.

21           MR. SEARS:   Your Honor, this is proposed  
22    Exhibit 2520.   And what I understand the witness to  
23    be saying is that she wants to offer the opinion  
24    that this impression here is consistent with the  
25    three-Z impression that she was tracking on track 1

1 but that this partial impression here is an  
2 overlapping impression from track 2.

3 There is no testimony in the record yet  
4 about any characteristic that's observational that's  
5 not 701, 702 or 703 testimony about the  
6 characteristics of any of the impressions of  
7 track 2.

8 Nor is there any ruling from  
9 Judge Lindberg that would allow her to testify as a  
10 lay witness about the characteristics. The only  
11 thing that Judge Lindberg ever talked about were the  
12 three "Z's" on this track.

13 I think it is beyond the scope of her  
14 expertise and improper testimony for her to offer an  
15 opinion that this is an overlapping impression from  
16 track 2 based on this partial impression with no  
17 obvious visible characteristics.

18 I made other objections about the  
19 characteristics of this impression here. But I  
20 think she's going far afield and beyond the scope of  
21 what I believe Judge Lindberg and you said she could  
22 testify to offering opinion about this partial  
23 impression, if I'm understanding her testimony.

24 THE COURT: Mr. Butner?

25 MR. BUTNER: Well, actually, Mr. Sears has it

1 just the opposite, Judge. If I could use the laser  
2 pointer. This is the track 1 that Detective Kennedy  
3 was following right in this area here. This is the  
4 overlapping track that almost covers the whole thing  
5 of track 1 with the exception of this particular  
6 little area right up here. And she can further  
7 explain all of that in her testimony and will be  
8 prepared to do so. That's the danger you run when  
9 you have lawyers trying to explain about tracking  
10 evidence.

11 THE COURT: I haven't heard sufficient  
12 foundation testimony at this time. I understand  
13 that she's here for the limited purpose of saying  
14 I'm able to track. But I found that with what she  
15 has testified to under oath regarding this -- call  
16 it unique pattern or distinctive pattern and the  
17 fact that there weren't other tracks out there and  
18 she followed this one, now it runs into another.  
19 And Mr. Sears has pointed out there has not been  
20 foundation to say why she knows this would be a  
21 different track.

22 And this isn't the same as expert  
23 testimony where somebody looks at a shoe print and  
24 says that's an Adidas. That's a New Balance.  
25 That's a whole different thing.

1           But we're talking about tracking. And  
2 obviously, a lot of that testimony can be challenged  
3 with regard to weight through cross-examination.  
4 But with regard to this, there has not been  
5 sufficient foundation to show why she would be able  
6 to distinguish one track from another.

7           MR. SEARS: I would go a step further and say  
8 that this witness should not be permitted to even  
9 attempt to lay foundation for the larger impression  
10 here because there is no distinguishing  
11 characteristic similar to the three "Z's" and three  
12 "N's" that Judge Lindberg would permit or you would  
13 permit her to testify about on that impression at  
14 all.

15           And so what she would propose to say, I  
16 would suspect, is that it is similar -- we're  
17 getting into that language again. Is similar or  
18 very much like other impressions in this track 2 she  
19 was testifying. So she wants to say that this  
20 impression has a characteristic.

21           That is pushed beyond the scope of what  
22 her permissible testimony as a lay witness would be,  
23 I would submit. She is then testifying about shoe  
24 print evidence from characteristics that are not  
25 readily apparent.



1           THE COURT: And I think there is a distinction  
2 between following a track and trying to make  
3 detailed comparisons and identifying a shoe and  
4 something of that nature.

5           At this point I don't know -- well, there  
6 could be a lot of other variables out there that  
7 could interfere or prohibit accurate testimony of  
8 actually tracking. At this point I haven't heard  
9 that.

10           And obviously, as I've said, it can  
11 certainly go to weight. But finding a print and  
12 then following it -- that's all she's testifying to,  
13 that type of expertise, if you will, that type of  
14 experience.

15           And at this time I'd be sustaining a  
16 foundation objection.

17           MR. SEARS: Thank you, Your Honor. Thank you.

18           THE COURT: Recess until about 15 minutes.

19           (Recess.)

20           (Whereupon, after the recess, the proceedings  
21 continued with a different court reporter on duty.)  
22  
23  
24  
25

1 STATE OF ARIZONA )  
2 ) ss: REPORTER'S CERTIFICATE  
COUNTY OF YAVAPAI )

3 I, Mina G. Hunt, do hereby certify that I  
4 am a Certified Reporter within the State of Arizona  
5 and Certified Shorthand Reporter in California.

6 I further certify that these proceedings  
7 were taken in shorthand by me at the time and place  
8 herein set forth, and were thereafter reduced to  
9 typewritten form, and that the foregoing constitutes  
10 a true and correct transcript.

11 I further certify that I am not related  
12 to, employed by, nor of counsel for any of the  
13 parties or attorneys herein, nor otherwise  
14 interested in the result of the within action.

15 In witness whereof, I have affixed my  
16 signature this 24th day of January, 2011.

17   
18 -----

19 MINA G. HUNT, AZ CR No. 50619  
CA CSR No. 8335